

2003

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Recommended Citation

Jeffrey Fagan and Victoria Malkin, *Theorizing Community Justice Through Community Courts*, 30 Fordham Urb. L.J. 897 (2003).
Available at: <https://ir.lawnet.fordham.edu/ulj/vol30/iss3/11>

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Cover Page Footnote

This research was supported by from the National Institute of Justice. All opinions and errors are those of the Authors. We are very grateful to the Center for Court Innovation for its generosity and cooperation in all aspects of the research, and to the residents of Red Hook for their honesty and accessibility over the two years of our research. Thanks to Michael Dorf and Greg Berman for helpful comments on earlier drafts, and to the editors for their contributions to the Article.

THEORIZING COMMUNITY JUSTICE THROUGH COMMUNITY COURTS†

Jeffrey Fagan*
and Victoria Malkin**

INTRODUCTION

Community justice practitioners argue that the justice system has long ignored its biggest clients—citizens and neighborhoods that suffer the everyday consequences of high crime levels.¹ One response from legal elites has been a package of court innovations and new practices known as “community justice,” part of a broader appeal to “community” and “partnership” common now in modern discourse on crime control.² This concept incorporates several contemporary visions and expressions of justice within the popular and legal literatures: problem-solving courts (such as drug courts, mental health courts, domestic violence courts, gun courts, and, of course, juvenile courts); the inclusion of victims and communities in the sanction process; community policing; partnerships between citizens and legal institutions; and alternative models of dispute resolution.³

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1. For a general overview, see TODD CLEAR & DAVID KARP, *THE COMMUNITY JUSTICE IDEAL: PREVENTING CRIME AND ACHIEVING JUSTICE* (1999). For a discussion on bringing the courts back into the community, see David B. Rottman, *Community Courts: Prospects and Limits*, NAT'L INST. JUST. J., Aug. 1996, at 46; see also John Feinblatt & Greg Berman, U.S. Dep't of Justice, *Responding to the Community: Principles for Planning and Creating a Community Court*, BUREAU JUST. ASSISTANCE BULL., Nov. 1997, at 1-9, available at <http://www.ncjrs.org/pdffiles1/bja/185986.pdf> (last visited Mar. 15, 2003).

2. See ADAM CRAWFORD, *THE LOCAL GOVERNANCE OF CRIME: APPEALS TO COMMUNITY AND PARTNERSHIPS* 4-7 (1997).

3. See COMMUNITY JUSTICE: AN EMERGING FIELD 327, 330 (David Karp ed., 1998); see also ERIC LEE, U.S. DEP'T OF JUSTICE, COMMUNITY JUSTICE SERIES No. 2, *COMMUNITY COURTS: AN EVOLVING MODEL* 3-4 (2000), available at http://www.courtinnovation.org/pdf/community_courts_evolution_model.pdf (last visited Mar. 15, 2002).

For court reformers, the conceptual ground and animating thought for problem-solving courts is that the system is broken, overloaded, and ineffective.⁴ Community justice projects go beyond the problem-solving court model to create legal institutions that bring citizens closer to legal processes.⁵ What separates community justice from the recent creation of specialized parts is the prospect of mutual accountability between courts and community, and the importance of local space in defining the types of problems that present themselves for socio-legal solution.⁶

Unlike treatment courts or problem-solving courts, community courts seek to fix problems in the courts by developing legal forums that are unique in three ways. First, these institutions bring citizens and defendants closer in a jurisprudential process that is both therapeutic and accountable. Legal responses to families and individuals with multiple legal problems are coordinated, and ideally, unified. Some community courts are multi-jurisdictional courts that link typically separate court parts into one location and under one administrative umbrella. Second, community justice centers and community courts link service providers to the court and, in turn, to families in a way that is responsive to their perceived needs. It brings the court closer—both physically and administratively—to the social and behavioral origins of the problems that it seeks to address, and it seeks to bring services to bear on these problems under the administrative aegis of the court. Third, these justice centers bring the courts and their service adjuncts into a community with limited access to both public and private services. The physical presence of the court in a community signals that the relationships of citizens and communities to courts differ in meaning, tone, and content. These courts are relatively new, and

4. See MICHELE SVIRIDOFF ET AL., CTR. FOR COURT INNOVATION, DISPENSING JUSTICE LOCALLY: THE IMPLEMENTATION AND EFFECTS OF THE MIDTOWN COMMUNITY COURT1-2 (2001), available at http://www.courtinnovation.org/pdf/disp_just_loc.pdf (last visited Mar. 15, 2003).

5. Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL'Y 63, 83-92 (2002).

6. "Community courts are neighborhood-based courts that use the power of the justice system to solve local problems. These courts seek to play an active role in the life of their neighborhoods, galvanizing local resources, and creating new partnerships with community groups, government agencies, and social service providers." John Feinblatt et al., *Neighborhood Justice at the Midtown Community Court*, in CRIME AND PLACE: PLENARY PAPERS OF THE 1997 CONFERENCE ON CRIMINAL JUSTICE RESEARCH AND EVALUATION 81 (Nat'l Inst. of Justice ed., 1998).

until now, have received neither research attention, nor jurisprudential analysis⁷

This Article reports on research on a community court that is part of the Red Hook Community Justice Center in Brooklyn, New York.⁸ Red Hook is a neighborhood in Brooklyn with a long and rich history of both fortune and misfortune.⁹ The neighborhood today is an area in transition, challenged by social deficits such as crime and drugs.¹⁰ Red Hook also is a neighborhood with weak services and economic institutions, which are further strained by competing claims for primacy and attention.¹¹ Furthermore, Red Hook's physical location isolates it socially from other parts of Brooklyn and New York City.¹²

One of the recurring crises in Red Hook, and many socially and economically disadvantaged neighborhoods, is the low rating by citizens of the legitimacy of law and legal institutions.¹³ Problems in both distributive and procedural justice, plus the failure of courts and other government programs to provide public safety and material well-being, have created a breach between citizens and government that is reflected in citizens' reactions to legal institutions. In Red Hook, the police and the courts historically have not been citizens' allies in their struggle for safety.¹⁴

7. Thompson, *supra* note 5, at 92-99. The most comprehensive community court research examined the Midtown Community Court. See SVIRIDOFF ET AL., *supra* note 4, at 1-2.

8. The term "community court" is used to refer to the legal processing of cases that occurs within the RHCJC, and to the "community justice center" when referring to its community development activities. See, e.g., Alex Calabrese, "Team Red Hook" Addresses Wide Range of Community Needs, 72 N.Y. ST. B.J., June 2000, at 14, available at http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/Shop/Bar_Journal/calabrese.pdf (last visited Mar. 15, 2003).

9. See Philip Kasinitz & Jan Rosenburg, *Missing The Connection: Social Isolation and Employment on the Brooklyn Waterfront*, 43 SOC. PROBS. 180,183-84 (1996); see also Aaron Donovan, *If You're Thinking of Living in Red Hook: Isolated Brooklyn Area Starts to Awaken*, N.Y. TIMES, June 10, 2001, § 11, at 7.

10. See *infra* Part II.B.

11. See Kasinitz & Rosenburg, *supra* note 9, at 182-86.

12. See Donovan, *supra* note 9, § 11, at 7; see also N.Y. City Dep't of City Planning, Community District Profiles, available at <http://www.nyc.gov/html/dcp/html/lucds/bk6lu.html#data> (last visited Mar. 15, 2003).

13. TOM R. TYLER & YUEN J. HO, TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS 108-11 (2002); Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 LAW & SOC'Y REV. 777, 799 (1998).

14. Christopher Ketcham, *Roach Motel*, SALON, Oct. 17, 2002, at http://archive.salon.com/mwt/feature/2002/10/17/jail_time/index_np.html (last visited Mar. 15, 2003). This article describes a man the author met in his cell block as:

Accordingly, the Red Hook Community Justice Center (“RHCJC” or “the Court”) focused its attention on the role of law and legal institutions in public safety.¹⁵ The creation of a court physically closer to the community, more responsive to the problems that give rise to crime, and accountable to the community to reduce crime and deliver remedial services, offers the Court a transformative role that will involve citizens in the processes of social regulation and control that are essential to crime prevention and justice.¹⁶ This is the theoretical challenge for problem-solving courts generally, and decentralized community-based courts in particular.

This Article theorizes the structure and process of community justice, focusing on the model offered by community courts. We examine how the Red Hook Community Justice Center’s development and implementation are the products of its immersion in the intersection of social, spatial, and political dynamics within the Red Hook neighborhood. Its creation was also influenced by the broader context of court innovation in New York, and local crime policies and problems in the city. The development of various forms of community justice has been under-theorized, despite the rapid expansion of community justice experiments and the broader acceptance of a new role for courts to attack specific manifestations of crime. Theory matters in this context, offering a causal story about the underlying dynamics of change, and identifying potentially enduring and generalizable lessons that help us predict whether the practices that are promising in one place would be equally effective in another.

This Article begins by reviewing the sociological perspectives that converge in the historical development of “community justice.”¹⁷ Community justice developed not just as a response to the concerns about legitimacy facing contemporary legal institutions, but also as part of a changing narrative of social control in areas undergoing rapid social structural change.¹⁸ We set forth a frame-

Rousted on a spurious charge—misdemeanor possession—and now the creep was off the streets of my hometown neighborhood of Red Hook, in Brooklyn, lodged safely here in the cinderblock ugliness that is the 76th Precinct of the NYPD, and toiled over by cops and clerks and DAs who know, if they have a conscience, that driving a man like chattel just because he carries a syringe doesn’t make sense.

Id.

15. See LEE, *supra* note 3, at 18.

16. See *infra* Part II.D.

17. See *infra* Parts I.A & I.B.

18. See *infra* Part II.D.

work of social regulation and control that shapes the internal workings of these new legal institutions, and also influences their relations with the communities that host them.¹⁹ Next, we identify challenges facing community justice centers and community courts in their efforts to reconcile a complex vector of institutional, social, and political dynamics.²⁰ The Article concludes by revisiting the conceptual frames of these courts, and locating their historical development in broader themes of the role of legal institutions in rapidly changing social contexts.²¹

I. THEORIZING COMMUNITY JUSTICE

The dissatisfaction of individuals who suffer the consequences of rising crime levels and/or social disorder, which makes their everyday lives unsafe, created a crisis of legitimacy for legal institutions. Much of this discontent centered on the courts.²² This pressure motivated reformers to create more accessible and effective judicial forums with the aim of solving local problems.²³ Although public dissatisfaction put policy makers and local government on alert, the movement towards a community justice model as the solution originated among leaders within the criminal justice system. These practitioners, especially judges, now see themselves as the champions behind these new legal experiments bracketed under a “community justice model” as they aim to improve the “quality of justice” delivered by the system.²⁴

Community justice practitioners justify these changes through their real experience of a “crisis”²⁵ in the court system. This crisis is defined by a system that is overloaded and unable to respond efficiently or thoughtfully to its caseloads. Practitioners point to their daily caseloads to infer that the system no longer works. They

19. See *infra* Part I.C.

20. See *infra* Parts I.C & I.D.

21. See *infra* Part III.

22. See Greg Berman & John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 LAW & POL’Y 125, 128 (2001), available at http://www.courtinnovation.org/pdf/prob_solv_courts.pdf (last visited Mar. 15, 2003).

23. See JOHN BRAITHWAITE, RESTORATIVE JUSTICE & RESPONSIVE REGULATION 46-47, 91 (2002); see also Leena Kurki, *Incorporating Restorative and Community Justice into American Sentencing and Corrections*, in SENTENCING AND CORRECTIONS: ISSUES FOR THE TWENTY-FIRST CENTURY 1-2 (U.S. Dep’t of Justice ed., 1999).

24. CLEAR & KARP, *supra* note 1, at 5; see JAMES F. NOLAN, JR., REINVENTING JUSTICE, THE AMERICAN DRUG COURT MOVEMENT 5, 108-10 (2001); Greg Berman, *What is a Traditional Judge Anyway? Problem Solving in the State Courts*, 84 JUDICATURE 78, 80 (2000); Sarah Glazer, *Community Prosecution: Should Prosecutors Try to Solve Local Problems*, 10 CQ RESEARCHER 1009, 1009-32 (2000).

25. See Berman, *supra* note 24, at 80.

highlight the high levels of recidivism, the “revolving door,” and the increasing levels of incarceration to assert that the “system is broken.”²⁶ The reorganization of the justice system toward a community justice ideal has been animated, therefore, by both the external pressures coming from citizens who want a more accessible and effective legal form, and by internal pressure and dissatisfaction brewing within the courts. Each of these sources of discontent contributed to a crisis of legitimacy, motivating judges, local governments, and other agencies to become more receptive to experimentation within the court system. These circumstances and changes are discussed further below.

A. Crime, Courts, and Legitimacy

Over the past two decades, economic, political, and social changes have led the courts onto the frontline of managing policy issues—such as the war on drugs, the crisis of gun violence, and quality of life campaigns—in ways that the legal system has not previously experienced.²⁷ At the same time, structural issues of size, management, and bureaucracy have affected the system, causing increased inefficiency and inflexibility.²⁸ This growth occurred in an era when local and national cost cutting have left both courts and police departments badly equipped.²⁹ Finally, criminal courts are faced with high numbers of offenders who have been adversely affected by social service cuts, such as the mentally ill, the homeless, and those addicted to drugs.³⁰

Community justice reconceptualizes the judicial branch. It is no longer an impartial arbiter of state power, but instead seeks to serve a victimized community that is in need of repair. The judicial branch now becomes an activist pressing for social transformation and neighborhood healing. It pushes for the mobilization of social services under the auspices of the court, and for new forms of de-

26. *Id.*; see NOLAN, *supra* note 24, at 108-10; John Feinblatt et al., *The Future of Problem-Solving Courts*, 15 CT. MGR. 28, 29 (1999).

27. See DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 193-205 (2000).

28. See *id.* at 87-89.

29. See *id.* at 81-82. Investments in criminal justice services in New York State, however, have grown in the past decade. The New York State Office of Court Administration budget has grown each year for the past seven years. See Division of Financial Management: Budget and Fiscal Operations, New York State Unified Court System, Judiciary Budget, *available at* http://www.courts.state.ny.us/Budget/Budget_docs.htm (last visited Mar. 15, 2003). The New York City Police Department budget doubled in size, after adjusting for inflation, from 1994-2000.

30. See GARLAND, *supra* note 27, at 75-76.

liberative democracy where transparent information becomes an engine for reshaping power relations between citizens and courts.³¹

From the outside, much of the “community justice model” from drug courts and mental health courts to restorative justice and the new “sanctioning circles”³² can be read as an attempt by the criminal justice system to respond to these challenges. The courts are now asked to manage the outcome of different social policies. These policies range from social services cuts that lead to increases in the numbers of homeless and mentally ill people on the street, to increased arrests that put these same individuals in the courts’ charge while leaving the court with limited tools to do anything but incarcerate or release them. These challenges have led judicial leaders and criminal justice officials to integrate legal and social services under the umbrella of community justice, even as they are faced with challenges to their own legitimacy.

Advocates for community justice state that their responses are motivated by real issues and less by theoretical debates, the real issue being that something is not working and needs to be fixed. But the underlying reasons for this inefficiency are more complex than an organizational malfunction—something implicitly alluded to by community justice advocates who argue that this model “aims to fix underlying problems.” The idea of a broken system, a system that relies on increasing levels of coercion without a corresponding reduction in crime,³³ suggests that it is not the court system alone that is the problem. Indeed, the very growth in arrest numbers, many for small nonviolent crimes, and the push for quality-of-life arrests suggests that the system requires these explicit demonstrations of force and coercion to maintain social order. That is, crime

31. See Michael C. Dorf & Charles E. Sabel, *Drug Treatment Courts and Emergent Experimentalist Government*, 53 VAND. L. REV. 831, 832-38 (2000).

32. Proponents of restorative community justice contend that the community, like the state and the victim, has a stake in justice that should be acknowledged and nurtured. The restorative justice model calls for both individual and community restitution to pay back the victims of crime and restore the community. BRAITHWAITE, *supra* note 22, at 10-12. This model calls for victim impact panels to educate offenders about the effects of their actions on victims and communities. *Id.* at 47-50. Furthermore, it supports family group conferencing to resolve issues that might otherwise come before courts. *Id.* at 66. The restorative justice model also suggests rehabilitation programs, in order to help offenders reconstruct their lives. *Id.* at 95-96; see Seamus Miller & John Blackler, *Restorative Justice: Retribution, Confession, and Shame*, in RESTORATIVE JUSTICE: PHILOSOPHY TO PRACTICE 77, 77 (John Braithwaite & Heather Strang eds., 2000).

33. Jeffrey Fagan & Garth Davies, *Policing Guns: Order, Maintenance and Crime Control in New York*, in GUNS, CRIME, AND PUNISHMENT IN AMERICA (Bernard Harcourt ed., forthcoming May 2003) (manuscript at 6-7, on file with authors).

is being controlled through formal, as opposed to informal, social control.

While formal social control may be one mechanism for enforcement, the ideal is that compliance will be voluntary, something that is more likely when individuals consider the law and its accompanying legal institutions to be fair, effective and legitimate.³⁴ Excessive noncompliance suggests that the law or its enforcers may be seen as illegitimate, something that is ultimately counterproductive at the social and economic level:

[L]egitimacy is significant not only for the maintenance of order, but also for the degree of co-operation and quality of performance that the powerful can secure from the subordinate; it is important not only for whether they remain in power but for what their power can be used to achieve In effect, the advantage of legitimacy is that a legitimate system can accrue enhanced order, stability, and effectiveness. While order, stability, and effectiveness can be achieved through other means, such as coercion alongside effective organizational capacity, legitimacy allows for the legitimization of power through moral forces and affects the attitudes and behaviors of the agents as moral agents.³⁵

In other words, a legitimate system in the long run is not only more cost effective and efficient (in market terms), but also at the level of social organization, it enables the powerless to be moral agents who are instrumental in the system's survival. This is quite different from the logic of the traditional hierarchical courts, where the powerless are imagined as responding in their own self-interest, to which the system responds in turn by imposing its own vision of a greater good. In the realm of legal institutions and the criminal justice system, the system is at its most stable when its power is utilized for a "public" good, while simultaneously engendering its own legitimacy. In this dynamic, the criminal justice system not only remains a positive representative of the state and its power, but also it leverages and promotes informal social control as individuals increasingly comply with the law, even in the face of laws with which they do not agree.³⁶ Furthermore, it becomes increasingly clear that without legitimacy, the system relies on increased

34. TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 22-30 (1990). Tyler finds that people are more likely to obey the law, even if they may not agree with a particular law, if they have had a positive experience with the law and they perceive the law to be legitimate. *Id.*

35. DAVID BEETHAM, *THE LEGITIMATION OF POWER* 29, 33 (1991).

36. TYLER, *supra* note 34, at 27-30.

law enforcement, sanctions, and incarceration, all of which become more costly, time consuming, and inefficient in terms of overall system stability. Such a system is not sustainable over time.

This reading of the “crisis” in the system highlights that outside of the ethical imperatives underlying the community justice movement (such as helping addicts, mentally ill, and others who have ended up under their jurisdiction and/or restoring community), the impetus to reorganize stems from a current “crisis” that challenges the very legitimacy of the courts.³⁷ The community justice model, in trying to fix the system, is trying to ensure that legal institutions remain legitimate as they maintain social order and public safety by reaching a systemic equilibrium of reciprocal and mutually reinforcing social controls.

B. Community Justice and the Search for Collective Action and Accountability

The application of community justice inside the judicial process, as opposed to the correctional system or policing, sees the court as more than an institution that uses the adversarial system to guarantee an individual’s right against the power of the state.³⁸ The courts and individuals no longer act alone, as the community justice model adds a third component—the community.³⁹ Courts now refocus their vision onto the communities whose members restrict their daily practices because of crime levels (real or perceived). In this theoretical perspective, the courts are present within a larger network, comprised of the court, civil society, and residents who will work towards the common good of the community.⁴⁰ Commu-

37. CLEAR & KARP, *supra* note 1, at 1-2.

38. *Id.* at 20-21.

39. *Id.*

40. *Id.* at 75. There is no rigorous definition of the term “community” and its limits, or the idea of “community” definitions within the community justice model. Clear and Karp use it to cover anything from an occupational group, ethnic affiliation, or voluntary associations alongside neighborhoods. *Id.* at 59-60. This Article does not address this issue, but it is worth asking why all these different groupings and networks are being classified as a “community,” and whether putting any particular group into a community is a sound basis for classifying it as community justice. See Gordon Bazemore, *Issues, Themes, and Questions for the New Neighborhood Sanctioning Models*, in COMMUNITY JUSTICE: AN EMERGING FIELD, *supra* note 3, at 342-44. Professor Bazemore discusses four different “community justice” models and shows how, in each one, the project has defined community according to its scope—from immediate victim, to victim and her family, to community leader, and finally to residents of a local space. *Id.* at 344-47, 351, 356-57. Bazemore also does not question this as one of the problematic issues within the community justice movement. *Id.* at 353-54. He does, however, point out that not all communities necessarily aspire or

nity courts are an important facet of the community justice movement, and are springing up throughout the United States.⁴¹ At the practical level, the community court proposes several ways in which it can benefit a neighborhood. It brings the court and its service adjuncts into a community with limited access to public and private services. By placing the court into the neighborhood, it brings the court closer—physically and administratively—to the social and behavioral origins of the problems that it seeks to address.⁴² It aims to bring services to bear on these problems under the administrative aegis of the court. Meanwhile, the physical presence of the court in a community signals that the relationships of citizens to courts and communities to courts differ in meaning, tone, and content.⁴³

Community courts have introduced a variety of mechanisms to respond to both theoretical and practical challenges they face, as they aim to create and augment their legitimacy:

1. *Individualized Justice*

Community courts focus at the level of the individual to counteract some of the social sources of crime—such as low levels of human capital, addiction problems, and other medical and social needs.⁴⁴ This is done by linking up individuals to different social services from treatment programs to employment training. They cater their sanctions to individuals and their needs and in this way hope to reduce the motivation or propensity for criminal behavior.

2. *Restorative Justice*

Alongside personalized sanctions, the new courts work to apply restorative justice. This means devising sanctions and processes that help both the victim's and the community's needs.⁴⁵ In many cases, the victim is understood to be the entire community, which may now gain material help, such as community service crews to undertake neighborhood projects—from park clean-ups to graffiti

idealize their participatory role in crime control, and that this can vary according to social, economic, and cultural factors. *Id.*

41. See BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, OVERCOMING OBSTACLES TO COMMUNITY COURTS: A SUMMARY OF WORKSHOP PROCEEDINGS iii (1998), available at <http://www.ncjrs.org/pdffiles1/173400.pdf> (last visited Mar. 15, 2003); see also LEE, *supra* note 3, at iii; Thompson, *supra* note 5, at 63.

42. See LEE, *supra* note 3, at 3.

43. See *id.* at 7.

44. See CLEAR & KARP, *supra* note 1, at 167-71; see also LEE, *supra* note 3, at 6.

45. See Bazemore, *supra* note 40, at 336.

removal. The victim could also be an individual whose interests are taken into account when a judge imposes a sanction (such as in assault and domestic violence cases).

3. *Moral Communication*

The physical existence of a problem-solving court or community court sends a signal to the community and/or the offenders that certain illegal and antisocial behaviors are not acceptable and that the law and legal institutions are working to prevent these behaviors.⁴⁶

4. *Creating Partnerships*

The courts, working in conjunction with social service agencies, community groups, schools, parent-teacher associations, churches, and other organizations, can create partnerships that will work to strengthen the community and advance the broader goals of the agencies or the community groups.⁴⁷ In this way, the legal institution is no longer separate and alienated from the communities with which it works. These partnerships are seen as a way to enhance the flexibility of the court system and its ability to respond to the particular needs of both individuals and neighborhoods.⁴⁸ The community is envisioned as an integral part of the process. Ideally, the “community” should also see itself as having “ownership” over the legal institution.⁴⁹ Furthermore, the creation of partnerships with the community, either through formal mechanisms (community groups and other social service agencies, and advisory boards) or informal mechanisms (individual relationships) integrate the court into the community’s social networks, and ensure that the court remains more accountable to its clients.⁵⁰

Community courts aim to ensure that there is an accretion of positive experiences for those individuals who encounter the courts.⁵¹ This includes both the offender population that benefits from this new form of “therapeutic jurisprudence” and other groups working in partnership with the courts.⁵² These processes and their positive outcomes are communicated to the community

46. *See id.* at 336-37.

47. *See, e.g.,* Berman & Feinblatt, *supra* note 23, at 4-5.

48. *See* Bazemore, *supra* note 40, at 337.

49. *See* LEE, *supra* note 3, at 7.

50. *See* Bazemore, *supra* note 40, at 337.

51. *See* LEE, *supra* note 3, at 7.

52. *See* CRAWFORD, *supra* note 2, at 119-23; *see also* Berman & Feinblatt, *supra* note 23, at 136-37.

at large through both direct and vicarious processes of social transmission or contagion that spread across social networks.⁵³

C. Community Courts and Social Regulation

To address the second dimension of legitimacy—compliance and embracing of the social norms of the law—community courts must address the quality of justice that comes with this new judicial forum. Community justice centers become desirable options only if they are truly more than just an efficient mechanism to deliver social services to a needy population and/or supply different social service projects to different neighborhoods. If this is their sole achievement, then one could advocate providing services without the court, thus avoiding the major overhaul and cost of reorganizing the legal system. Not only is this cheaper, but it may also benefit the community more, as those people who are reluctant to enter a court to seek help may prefer to seek help through service agencies that are free standing.

Community courts have to provide new forms of justice, both through the courtroom and other court initiatives. Both should be visible and available for the community. At the theoretical level, community courts should render the court accountable to local individuals and groups. Even when crime is the result of macro-level determinants (such as poverty or poverty housing) the community court model assumes that these problems will be differentially distributed and manifested in different ways across a local social, economic, and political space. The local space determines the types of problems that present themselves for a socio-legal solution and specific solutions are usually perceived at the local social and political level. Community courts can address localized crime and other local problems, such as drinking in a specific park, drugs in a specific building, or prostitution on a specific street.⁵⁴ Unlike treatment courts and other problem-solving courts, community courts seek to fix problems in the courts and in the outside community by developing legal forums that are uniquely configured towards its particular crimes and social problems.⁵⁵ Accountability takes place

53. See, e.g., JACK BALKIN, *CULTURAL SOFTWARE* 90-96 (1997); AARON LYNCH, *THOUGHT CONTAGION* 1-16 (1996); see also Ronald Burt, *Social Contagion and Innovation: Cohesion Versus Structural Equivalence*, 92 AM. J. SOC. 1287, 1288-89 (1987).

54. See, e.g., CLEAR & KARP, *supra* note 1, at 169-70 (describing how Bryant Park in Manhattan, formerly a haven for drug-dealers, was successfully transformed physically as a result of community initiatives).

55. See, e.g., Rottman, *supra* note 1, at 48-50 (describing different models for community-focused courts); Thompson, *supra* note 5, at 88-92.

as the court's focus and outcomes are determined by the space in which the court operates.

On the flip side of this new triad of court-community-service providers is the assumption that the people whose quality of life is affected by crime can be mobilized in such a way that their participation will enhance and complement the role of the criminal justice system. That is, community justice centers assume that many people who commit crimes of particularized concern in the court's local space can be rehabilitated, and that once rehabilitated, those people who are residents or victims can exert a form of informal social control that will ultimately reduce crime.⁵⁶

This assumption stems from the fact that fear of the legal system does not promote compliance in neighborhoods with high crime rates.⁵⁷ Social ties among citizens and their dynamic expressions of social control contribute in separate and different ways from legal control to produce lower crime rates.⁵⁸ While participation and partnerships with local communities can vary—from using them to help enforcement (as when you ask the residents to inform the police and the courts about “hot spots”), to determining sanctions—the ideal is that community courts can bring citizens and defendants closer in a jurisprudential process that is at once therapeutic and accountable.

D. Local Problems, Community Justice, and Legitimation

Through their creation, community courts can address problems that centralized courts cannot. For example, some community courts and community justice centers can link typically separate court parts (such as family courts, housing courts, and criminal courts) into one location and under one administrative umbrella.⁵⁹ In this way, legal responses to families and individuals with multiple legal problems are coordinated and, ideally, unified. Also, community courts can respond to community “problems” that are

56. See, e.g., N.Y. Ass'n of Pretrial Serv. Agencies, Red Hook Community Justice Center (stating that through community restitution, the Justice Center will make justice more visible and tangible to local inhabitants), at http://www.nyapsa.org/red_hook_community_justice_center.htm (last visited Mar. 15, 2003).

57. See, e.g., ROBERT J. BURSIK, JR. & HAROLD G. GRASMICK, NEIGHBORHOODS AND CRIME 1 (1993); Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Model of Collective Efficacy*, 277 SCIENCE 918, 918-24 (1997), available at http://www.sactaqc.org/Resources/Literature/Neighborhood_Vitality/Neighborhoods_and_Violent_Crime.htm (last visited Mar. 15, 2003).

58. Sampson et al., *supra* note 57, at 1-2.

59. See, e.g., LEE, *supra* note 3, at 18.

normally considered as nuisances or “victimless” crimes—such as loud noise, graffiti, illegal vending, prostitution, and public urination—problems that typically do not command the attention of centralized courts. These are crimes that affect specific neighborhoods and that have specific consequences.⁶⁰ Ideally, community courts redefine these crimes as problems for the community, an evaluation that is quite different from its scale within a formal legal framework.⁶¹

These practical strategies, such as providing new services and responding to local problems, are one part of the community court’s response to the crisis of legitimacy of both the law and the legal system at the local level. These localized courts can now seek to both reestablish their legitimacy, and through this, encourage the informal mechanisms of social control that will reduce crime and improve a community’s quality of life. The larger goal of engendering legitimacy is one of the few ways that a court can cement its role in improving public safety within a local space without resorting to increased use of coercive force and social control.

For a court to take on this new role, it has to create new partnerships; it cannot control crime alone. But the court is in a double bind; that is, the partnerships with the community can only emerge if the groups (or “partners”) within the community perceive the legal actors and the court to be a legitimate institution. If not, the groups will at least have to see the partnership as being to their benefit for some other reason—the community court could be used as an access to resources that citizens lack.⁶² Community courts

60. See WESLEY SKOGAN, *DISORDER AND DECLINE* 168-69 (1990) (explaining how the lack of organized community participation in disorderly neighborhoods further impairs the capacity of residents to help themselves); RALPH B. TAYLOR, *BREAKING AWAY FROM BROKEN WINDOWS* 136-37 (1998) (criticizing the shift within the court system from focusing on community rights to individual rights of the “homeless, panhandlers, and others”); Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 612-13 (2000).

61. See, e.g., LEE, *supra* note 3, at 9-18 (describing various community courts and what they share in practice). While writers such as Lee see these courts as focusing on quality-of-life issues that nag communities and invite more serious crime, this is a limited perspective that fails to establish a comparative advantage for community courts. To truly depart from regular court parts, drug treatment courts, or other specialized parts, community courts have to be focused on a specific location and guided by the partnerships formed with individuals and groups in this space.

62. See BEETHAM, *supra* note 35, at 29-32. Beetham argues that for power to be maintained, it has to gain the consensus of those who are ruled. *Id.* In many cases this is obtained by getting active consent from various strategic representatives, as most often this consent will give the subordinate access to resources they lack or other

need to consider this bind as they enter into neighborhoods and form partnerships. This is a major challenge facing the court in its quest to transform itself into a legitimate social actor.

The above discussion highlights the underlying goals that are essential for both the community justice ideal in general and community courts in particular. While different legal experiments may envision different or multiple paths to legitimacy, their shared final goal is to be seen as legitimate actors who can enlist and enable a community in their own practices that encourage informal social control. Now, empirical evidence is necessary to assess whether courts can accomplish this end. Such evidence should be considered through two vantage points. The first is what are the successes and challenges in the implementation of the practical strategies that are part of the community court as an operating model (for example, designing an efficient and effective treatment program, creating a multi-jurisdictional courtroom, and choosing partners and working with them). Second, and more importantly, is whether those practical strategies adopted by a community court, even when successful within the specific parameters of a court's goal, are the practical strategies necessary to engender legitimacy within a particular community, and thus achieve the broader goals that underlie the community justice model in general, and the community court in particular.

II. LEGITIMACY AND COURT INNOVATION: THE RED HOOK COMMUNITY JUSTICE CENTER

The research for this Article was designed to describe and explain how the Red Hook Community Justice Center faced its organizational, political, and legal challenges. While the Article acknowledges most of the practical or operational problems that could hinder the function of the Court as a social institution, it focuses on several theoretical assumptions and practical problems that challenge the role of this Court as an institution that can engender legitimacy in a community. This Article illustrates some of the obstacles to legitimacy faced by the RHCJC both before and after its arrival in Red Hook.

benefits. *Id.* Without this consent, it is impossible for power to be seen as legitimate. *Id.*

A. Research Methodology

The research for this Article took place from October 2000 to December 2001. The principle method was ethnographic study that included several elements: participant observation in the courts and the surrounding neighborhoods, regular attendance at community meetings, interviews with defendants, court employees, other representatives of the criminal justice system both inside and outside of the court, and community residents. One of the Authors (Malkin) attended operations meetings of the RHCJC "team." These meetings were organized in the court to monitor defendants and court cases, as well as other matters related to court operations. She went to several sanctions groups, such as the marijuana groups and the quality of life groups, as well as the job training and treatment readiness programs, so that she could become familiar with their content and observe the defendants' responses. She also regularly attended the Red Hook public housing tenant association meetings for Red Hook Houses, Red Hook Civic Association Meetings, meetings at the Seventy-Sixth police precinct, and other community meetings as they arose. She had frequent informal interviews with large numbers of court employees, visitors, and defendants in the courts, and neighborhood residents. These events were recorded during the research period through ongoing field notes.

Malkin also conducted open-ended formal interviews, which were taped and transcribed with fifty-nine individuals and thirteen community service crews in the courts. These individuals represent a variety of perspectives and experiences in the neighborhood and inside the court. Interviews ranged in length from thirty to ninety minutes. Most individuals were interviewed after Malkin had met the individual several times through her regular presence in the neighborhood and court. While the set of interviews may not be a representative sample, the ethnographer's prior knowledge of the neighborhood, the context, and the individual (in some, but not all cases) allowed for a great deal of openness and frankness. In each interview a series of general themes were discussed; for individuals involved with the court (as employees, defendants, or voluntary users), respondents discussed the idea of the court, its function, and performance. Interviews then went on to discuss more general ideas about the police, crime, and problem solving. For neighborhood residents, interviews asked about neighborhood history, law and order, police activity, and attitudes towards crime and problem solving.

For this period of participant observation, field notes were kept and observations were recorded. At the end of the field period, the taped interviews were all coded in a qualitative database and analyzed according to the various themes that emerged. This ethnographic method builds on the deductive experience of spending long periods of time in a field site, and conclusions are based on empirical observations. While the interviews cannot be seen to represent a sample population, they capture a wide range of different views within the community. What this method sacrifices in terms of sample and quantitative method, it gains through the ongoing presence of the researchers and their presence at specific events, moments and conflicts which can then be followed over time.

This qualitative methodology has a long history in anthropology, sociology, and other social sciences, and follows a rich tradition of community studies.⁶³ More recently, legal anthropologists have used these methods to explain the interactions of individuals with legal actors and institutions, to identify the meanings and categories that citizens use to evaluate these interactions, and to understand how law as an institution behaves toward individuals. For example, Professors Patricia Ewick and Susan Silbey studied the transactions of ordinary citizens with civil, criminal, and administrative components of law.⁶⁴ Similarly, Professors John Conley and William Barr,⁶⁵ Sally Merry,⁶⁶ and Laura Nader⁶⁷ have all used qualitative research and variations of the ethnographic method to understand how legal institutions and the law are actually understood and received by those who use the law. This ethnographic method is essential for the study of a court within a community that seeks to address community issues and integrate into the social relations of a community. The conclusions reached in this Article are based on this long, cumulative process, much of this a method of "being there." This is a recognized method required to reach reliable, in-depth understandings of processes and social relations that are often missed in quantitative research.

63. See generally CLIFFORD GEERTZ, *INTERPRETATION OF CULTURES: SELECTED ESSAYS* (1973).

64. See generally PATRICIA EWICK & SUSAN SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998).

65. See generally JOHN M. CONLEY & WILLIAM M. O'BARR, *RULES VERSUS RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE* (1990).

66. See generally SALLY MERRY, *GETTING JUSTICE, GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING CLASS AMERICANS* (1990).

67. See generally LAURA NADER, *NO ACCESS TO LAW* (1980).

B. Origins of the Red Hook Community Court

Red Hook is a geographically and socially isolated community of low-income families.⁶⁸ It is cut off from other nearby Brooklyn neighborhoods by a large expressway, whose construction decades ago was contested by community residents who foresaw the adverse consequences of cleaving the area from its residential surroundings.⁶⁹ Surrounded by water on its other three sides, the Red Hook population fell from more than 22,000 people in the 1950s, to an estimated 11,000 in 1990.⁷⁰ According to the 2000 Census, the median household income in the four census tracts comprising Red Hook was \$27,777,⁷¹ well below the New York City median of \$38,293.⁷² More than seventy-eight percent of the children in Red Hook live in households lacking one or both natural parents;⁷³ 29.2 percent fall below the poverty level,⁷⁴ compared to 21.2 percent citywide.⁷⁵ Fewer than half the persons over twenty-five years of age are high school graduates,⁷⁶ and fewer than ten percent of this same population group have college degrees;⁷⁷ nearly thirty percent of the working-age men in Red Hook are unemployed.⁷⁸ Approximately 8,000 of Red Hook's 11,000 residents (approximately seventy percent) live in the Red Hook Houses,⁷⁹ one of New York's largest and oldest public housing projects in the city.

Once a busy waterfront neighborhood, the decline in the shipping industry in New York City meant that Red Hook suffered the

68. See generally KENNETH JACKSON & JOHN MANBECK, *THE NEIGHBORHOODS OF BROOKLYN* (1998). See also Donovan, *supra* note 9, § 11, at 7; Kasinitz & Rosenberg, *supra* note 9, at 182.

69. Donovan, *supra* note 9, § 11, at 7.

70. See Kasinitz & Rosenberg, *supra* note 9, at 182.

71. Red Hook is a neighborhood comprised of four census tracts: 0055, 0057, 0059, 0085. See N.Y. City Dep't of City Planning, Political and Administrative Districts, Census Tracts, at <http://www.ci.nyc.ny.us/html/dcp/html/bytes/dwndistricts.html#cbt> (last visited Mar. 15, 2003). Social and economic indicia for Red Hook from 2000 U.S. Census data for each of the constituent census tracts. See U.S. Census Bureau, 2000 Census Pub. L. No. 94-171 File & STF1 Files; see also N.Y. City Dep't of City Planning, Population Division, Demographic Tables [hereinafter N.Y. City Dep't of City Planning, Demographic Tables] (providing tables for the 2000 Census Tables for New York City), available at <http://www.ci.nyc.ny.us/html/dcp/html/census/poptable.html> (last visited Mar. 15, 2003).

72. N.Y. City Dep't of City Planning, Demographic Tables, *supra* note 71.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. Kasinitz & Rosenberg, *supra* note 9, at 183.

consequences of deindustrialization and job losses that were the mainstay of much of the neighborhood.⁸⁰ It is a mixed-use neighborhood whose older private houses are leading the way towards a (contested) transition into a residential neighborhood.⁸¹ The majority of its residents, however, live in New York's oldest and largest housing project, which was begun in 1939.⁸² Red Hook has been challenged by high crime rates and suffered drug gang wars in the 1980s and 1990s, culminating in the accidental shooting of the highly regarded local elementary school principal Patrick Daly on December 17, 1992.⁸³ This shooting was one of the galvanizing events in the establishment of the Red Hook Community Justice Center.⁸⁴ The District Attorney's office, along with the Center for Court Innovation ("CCI"), an organization that had established a community court in Manhattan's busy Midtown area,⁸⁵ focused on Red Hook as the ideal spot to establish a community court.⁸⁶ The Executive Director of CCI explained why Red Hook offered unique advantages to host this experimental court:

CCI: I think what was of interest to us was testing [a community court] in a more residential or stable area or community. Certainly we were attracted to Red Hook because of its physical isolation . . . but also it seemed like a very interesting place to be able to test because it is small and it is sort of like other American places, oddly enough even because it is so different. In so many ways what we were aware of is that people come to Red Hook from around the country actually can find that they can

80. See *id.* at 182-83.

81. Donovan, *supra* note 9, § 11, at 7; see Tara Bahrapour, *Warehouse is an Emblem of Newest Waterfront Battles*, N.Y. TIMES, Feb. 9, 2003, § 14, at 8.

82. Kasinitz & Rosenberg, *supra* note 9, at 183.

83. See David Gonzalez, *A Man Who Won Trust and Offered a Way Out*, N.Y. TIMES, Dec. 18, 1992, at B12; see also Seth Stern, *A Court of Second Chances*, CHRISTIAN SCI. MONITOR, Aug. 22, 2002, at 11.

84. See Stern, *supra* note 83, at 11; see also Donovan, *supra* note 9, § 11, at 7 ("The movement to create the center began after Patrick Daly, a beloved principal at P.S. 15 on Sullivan Street, was killed in a drug-related gunfight in December 1992 as he searched the Houses for a nine-year-old boy who had left school crying after a fight.").

85. The Center for Court Innovation is a not-for-profit organization that works in partnership with the New York State Unified Court System to establish new public and private initiatives. For more information, see the Center for Court Innovation website, at <http://www.courtinnovation.org/center.html> (last visited Mar. 15, 2003).

86. CCI had established one community court in Midtown Manhattan prior to planning the RHCJC. The opportunity to work in Red Hook was in part motivated by the fact that the Midtown Community Court ("MCC") was functioning in a neighborhood with no clear residential population and whose interests were arguably more defined by business interests.

often relate to Red Hook more easily that they can relate to midtown Manhattan in terms of an isolated community. So I think that what we really wanted to do was to see the extent to which the court can act as convener and test the extent to which the court could welcome through its front door and its back door, so that people can come into the court using its services . . . and see the extent to which the court could either sponsor, or encourage, or be a place where it could provide diverse activities within the community that would promote things as diverse as youth leadership and things like Youth Court and Education to things like GED sponsorship. . . .⁸⁷

Red Hook is exactly the type of neighborhood that a community court model hopes to benefit. The RHCJC was located in the middle of a residential community that had a series of public safety issues, which also resonated with the Court's aspirations to legitimize law, legal institutions, and the legal process. The neighborhood is challenged by the concentration of social deficits, including crime.⁸⁸ When Red Hook enters the public consciousness in New York, it is rarely in a positive context. In 1988, *Life* magazine labeled Red Hook one of the most crack-infested communities in the nation.⁸⁹ Yet, there are distinct community building blocks. Red Hook possesses a network of community groups, including tenant associations, a local Beacon school,⁹⁰ youth organizations, local development corporations, and churches.⁹¹ Red Hook also has several natural assets, including open spaces for recreational use, and

87. Dr. Malkin conducted these interviews in Red Hook and its surrounding neighborhoods in Brooklyn between October 2000 and December 2001. Federal regulations for human subjects research require that interview participants are guaranteed privacy, confidentiality, and anonymity. See 45 C.F.R. § 46 (1991); see also Donna Shalala, *Protecting Research Subjects—What Must Be Done?*, 343 NEW ENG. J. MED. 808 (2000). Copies of the interviews, redacted to exclude individual identifiers, are on file with the Authors.

88. Cf. Amy Waldman, *Neighborhood Report: Red Hook; At Housing Project, Drugs Linger but the Killing Fields Go*, N.Y. TIMES, Feb. 1, 1998, § 14, at 8.

89. Edward Barnes & George Howe Colt, *Crack: Downfall of a Neighborhood*, LIFE, July 1988, at 92.

90. The Red Hook Beacon Community Center is an after-school program run by Good Shepard Services of Brooklyn at PS 15, an elementary school at 71 Sullivan Street, in Red Hook. For the location and further information on the Red Hook Beacon Community Center, see the Good Shephards Services website, at http://good-shepherds.org/sub-programs_services/ps-program_locations.html#rh13 (last visited Mar. 15, 2003).

91. Daniel McGillis, *Beacons of Hope: New York City's School-Based Community Centers*, NAT'L INST. JUST. J., Jan. 1996, at 2-15.

waterfront property with spectacular views of downtown Manhattan and the Statue of Liberty.⁹²

It is, however, also a neighborhood that has weak services and economic institutions. In common with many other low-income neighborhoods, it has experienced a decrease in the resources and services that help fight some of the social effects of poverty.⁹³ Furthermore, it has a sense of abandonment: abandonment of the economic sectors that sustained the neighborhood, such as the waterfront industry and the related manufacturing businesses;⁹⁴ abandonment by the government who not only reduced the levels of resources and services the community, but also by local charitable groups that suffer cutbacks and come and go;⁹⁵ and, most important for this discussion, abandonment by the law enforcement community whom the community holds partly responsible for the rampant growth in the drug gangs and related violence due to its (perceived or real) inability to provide effective enforcement and to deploy enough patrols to protect the neighborhood from the drugs and violence that hamper everyday life.⁹⁶

The community court in Red Hook was opened in April 2000, after a long planning period that began in the early 1990s.⁹⁷ By the time the court opened, the neighborhood was already in transition. In the research interviews, different groups, including newer homeowners, older residents and the large numbers of residents in public housing had contested views of the neighborhood. Each of these groups had particularized visions of the neighborhood's better future, but each imagined the improvement happening in different ways. Newer arrivals, gentrifiers, and older residents who live in the private houses at one end of Red Hook are mobilized mainly through their aspirations to transform the neighborhood into one more "Brooklyn residential brownstone" neighborhood.⁹⁸ In contrast, the residents of public housing (which comprise the neighborhood's majority) are more concerned with maintaining the public

92. Kasinitz & Rosenberg, *supra* note 9, at 182.

93. See The Red Hook Civil Association website, at <http://www.redhook-brooklyn.org> (last visited Mar. 15, 2003).

94. Kasinitz & Rosenberg, *supra* note 9, at 182.

95. *Id.*

96. See Waldman, *supra* note 88, at 8; see also Donovan, *supra* note 9, § 11, at 7.

97. See N.Y. Ass'n of Pretrial Serv. Agencies, *supra* note 56; see also GREG BERMAN, CTR. FOR COURT INNOVATION, RED HOOK DIARY: PLANNING A COMMUNITY COURT 1-8 (3d prtng. 2001), available at http://www.courtinnovation.org/pdf/redhook_diary.pdf (visited Mar. 15, 2003).

98. Donovan, *supra* note 9, § 11, at 7.

housing projects, and the creation of new opportunities, such as jobs and after-school programs.⁹⁹

In spite of these differences, all residents share the desire for a safe environment. Furthermore, many residents have memories of previous decades when threats to personal safety were much higher and crime was a major problem. Public housing residents still experience these problems—albeit at a lesser level—and a subsequent deterioration of their quality of life. Throughout Red Hook, however, residents coincide in their desire for the neighborhood to be a space where families, businesses, and residents can all thrive and enjoy a quality of life they observe daily in neighboring areas, some of which contain very expensive property.¹⁰⁰

B. The Red Hook Community Justice Center As an Operating Model for a Community Court

After an extended period of consultation with different community leaders within Red Hook, and representatives for the neighborhood whose work involved other domains of public life in New York City (for example, Community Board leaders), CCI designed an operating model that had the court working as a multi-jurisdictional court, combining criminal, family, and housing in one courtroom presided over by one judge.¹⁰¹ CCI and community representatives toured eight possible locations. They selected an abandoned school that lies between the public housing sites and the older waterfront area, and with the support of public and private funds, CCI converted this school into the Red Hook Community Justice Center.¹⁰²

They planned for the RHCJC to provide social services for defendants and residents either through its own staff, or by enlisting partner agencies to work in the building.¹⁰³ Community service would provide work groups that could address neighborhood concerns. Other preventative programs were also solicited, including a GED class, a youth court, an AmeriCorps program for local residents, a mentoring program, a victim advocate program, various group therapies and counseling, a mediation program, and job-training and job development programs.¹⁰⁴

99. See *supra* note 87 and accompanying text.

100. Donovan, *supra* note 9, § 11, at 7.

101. See, e.g., LEE, *supra* note 3, at 18.

102. BERMAN, *supra* note 97, at 7-8.

103. See, e.g., LEE, *supra* note 3, at 18.

104. *Id.* at 18-19; see also Donovan, *supra* note 9, § 11, at 7.

CCI established an AmeriCorps program in the neighborhood in November 1995, more than three years before the court opened.¹⁰⁵ Today, AmeriCorps members complete a mandatory number of weekly work hours in different institutions (from the police precinct, to the housing office, to the schools). AmeriCorps members participate in community events, such as arts and cultural programs and neighborhood days. Among their activities, AmeriCorps members also organize a baseball “little league” every summer and an annual block party outside of the Justice Center, run a Christmas coat drive for charity, and participate in “park clean up days” organized by the Court. AmeriCorps members escort defendants to drug treatment, they supervise children in day care at the Court, and help defendants meet community service mandates.

CCI conceived of operating model that had the Court working as a multi-jurisdictional court combining criminal, family, and housing in one courtroom presided over by one judge. The courtroom is open five days a week, from Monday to Friday. The criminal court hears misdemeanor cases and low felony cases (D and E) everyday. All summons (the majority of these are quality-of-life violations, such as open alcohol containers or public urination) are heard on Tuesdays. Family court, which hears juvenile delinquency and family offense matters, is held on Tuesday afternoons. The Justice Center has a district attorney’s office and Legal Aid (indigent defense service) office on site. The New York City Criminal Justice Agency, the city’s pretrial services agency for bail screening, also has offices in the Justice Center, as does the New York City Probation Department.

At the end of the research period, a housing part (“HP”) was poised to open to hear cases one day a week. This was only to serve New York City Housing Authority (“NYCHA”) residents, and was to deal with hold-over (eviction) cases brought against residents by the NYCHA, as well as non-payment actions against tenants for delinquent rent. These cases often are the result of disputes between tenants and the NYCHA over tenant claims that their apartments are in disrepair. Tenants can initiate claims in housing court, seeking a court order directing the NYCHA to make needed repairs to an apartment. In our interviews, NYCHA tenants complained of long-standing problems involving no heat, hot water holes in walls, and broken windows. Addressing these claims is part of the HP jurisprudence of settling these cases.¹⁰⁶

105. See N.Y. Ass’n of Pretrial Serv. Agencies, *supra* note 56.

106. See *supra* note 87 and accompanying text.

The Court has responded to tenant's concerns by efficiently reducing the backlog of housing repair "tickets." The RHCJC Judge has been a driving force in resolving the longstanding tensions between NYCHA and public housing residents. In a recent case, the Judge personally visited a building to verify that there was no hot water.¹⁰⁷

The criminal courtroom hears cases from three police precincts, the Seventy-Sixth, which encompasses Red Hook, the Seventy-Second, and the Seventy-Eighth. These three precincts actually take in a variety of surrounding neighborhoods, from the exclusive Park Slope brownstones, to the staid garden apartments of Carroll Gardens, to the adjacent Cobble Hill neighborhood of newly renovated brownstones and upscale shops, to the heavily immigrant area of Sunset Park.¹⁰⁸ While the Court's physical presence immediately affects Red Hook, and is far more accessible for these residents, the services and courtroom are open for anyone arrested in these precincts, while the voluntary uptake of the services is available for anyone.

The courtroom is on the main floor when you enter the building. The first floor also has a mock courtroom, a childcare center, Legal Aid offices, and other social services; other programs and services are located throughout the building. Some of these are run by CCI staff, and others are operated by partner agencies enlisted by CCI, and ready to devote their resources (in most cases the cost of placing a member of staff in the Justice Center). The Court also provides sanctions in the forms of community service crews, which would be able to address neighborhood concerns.

Thus, the RHCJC houses a diverse collection of agencies under one roof. Appendix A shows the social and legal services in RHCJC as of December 2002. In the clinic upstairs, there are three to four CCI social workers and counselors, one youth worker from Good Shepherd Services, staff from Phoenix House (a total abstinence treatment program), and probation officers. Counselors from the Counseling Service of the Eastern District of New York¹⁰⁹ come in twice a week to give marijuana counseling groups. A staff member from Park Slope Safe Homes had also recently

107. *Modon v. N.Y. City Hous. Auth.*, No. 20010 (N.Y. Hous. Ct. Mar. 19, 2003).

108. See Donovan, *supra* note 9, § 11, at 7.

109. The Counseling Service of the Eastern District of New York ("CSEDNY") is a social service agency in Brooklyn that provides counseling to persons referred from numerous private and public agencies in the New York metropolitan area. CSEDNY specializes in substance abuse treatment for persons referred from the criminal justice system, youth services programs, and private employers.

begun to make weekly visits to the Justice Center to offer counseling for domestic violence issues. This collection of agencies allows defendants and residents to attend different therapeutic groups on-site, or to be referred to agencies around the city.

In addition to these more therapeutic services, the Justice Center has established other types of programs. A victim services is on site to work with victims of assault and other crimes. There is a GED program held every morning during the school year and twice a week in the evenings on the top floor. There is a mediation program staffed by CCI and others trained in mediation who provide sessions twice a week to try to resolve criminal cases as well as other disputes. There is also a Housing Resource Center. Before the housing part opened, its main use was to refer disputes to the mediation center and provide people with information about government housing programs. After the court opened its Housing Resource Center, it also instructed individuals who were being summoned for hearings at the NYCHA administrative offices for eviction and nonpayment about where to go and what to do. The Housing Resource Center staff works with NYCHA to ensure that repairs are completed for heat, hot water, plumbing, and electricity. There also is representative of the Human Resources Administration (the city's public assistance agency) onsite to help tenants to meet rent payments.¹¹⁰

Also on the main floor of the building is the Youth Court, where teens conduct non-binding simulated court hearings two evenings a week in a mock courtroom using a "teen court" or peer adjudication process.¹¹¹ Tucked away at the back of the basement is a part-time staff member of the Fifth Avenue Committee who directs job-seekers to programs, helps them with their resumes, and, when possible, sends people for job interviews.

CCI also began a mentoring and internship program in 2001 to place youth court members in community service and other activities. The AmeriCorps program, detailed above, is managed from the building and runs the Red Hook Public Safety Corps. This program was begun by CCI (in partnership with the district attorney and the city's victim services agency) in 1995, nearly five years before the Justice Center opened. This program recruits individu-

110. See *supra* note 87 and accompanying text.

111. See, e.g., Jeffrey A. Butts & Janeen Buck, Office of Juvenile Justice & Delinquency Prevention, *Teen Courts: A Focus on Research*, OJJDP JUV. JUST. BULL., available at http://www.ncjrs.org/html/ojjdp/jjbul2000_10_2/contents.html (last visited Mar. 15, 2003).

als from Red Hook and Brooklyn each year and features a large number of individuals who have grown up in the neighborhood or surrounding areas.

Eighteen months after hearing its first case, the RHCJC also began a program, Operation Toolkit,¹¹² where they solicited community members to identify local problems of crime and disorder. The RHCJC, along with other concerned groups and individuals, could then consider the ways their varied groups and contacts (district attorney's office, police, defense lawyers, social workers, and court staff) could help to solve these problems. They also created a Community Advisory Board, which included different members of the criminal justice system, court staff, community leaders, community board members, community group leaders, school principals, police precinct captains, and a few other notable local residents. The board meets once every three to four months. At these meetings, the court gives the audience an update on their progress, hears complaints from residents about neighborhood conditions or services, and solicits ideas about community services and projects that might be undertaken by the Justice Center to improve the neighborhood (under Operation Toolkit). While the RHCJC began with a criminal court in April 2000, the family court cases arrived about one year later in May 2001; two years after the criminal part first opened, the Housing Part opened.¹¹³ The Justice Center could finally claim to be a multi-jurisdictional court (although it has encountered less overlap between cases in the different courts than its initial conception envisioned).

At the end of the research period, the Justice Center could be seen as running closer to the way it had envisioned in its initial proposals. As an organizational challenge, CCI managed to negotiate much of the bureaucratic inertia that grows over time in some organizations. In addition to persuading criminal justice agencies such as Probation and Legal Aid to provide staff on-site, they convinced the New York City Department of Correction to provide a

112. Operation Toolkit aims to deal with community problems by combining both RHCJC resources and those of outside partners (the police, the district attorney, the community, and the church) to see if there are new and innovative ways to solve community problems. See GREG BERMAN, CTR. FOR COURT INNOVATION, REPORT TO THE NEW YORK FOUNDATION: OPERATION TOOLKIT 5, 6 (2002).

113. See Community Board Six General Board Meeting, Minutes (Sept. 11, 2002) (representing the Red Hook Community Justice Center, Kelli Moore, reported that since beginning in May 2002, the Housing Court component of the Justice Center had already heard more than 300 cases), available at http://www.brooklyn6.org/Committees/Committee_3/CBM200209.doc (last visited Mar. 15, 2003).

bus to pick up defendants twice a day. The RHCHC recruited partner agencies and they tirelessly engaged in fund raising so as to establish and sustain programs (for example, the mentoring program that was introduced in 2001). They monitor and track defendants effectively and have better-than-average rates for short-term sanctions.¹¹⁴ Warrants are issued for defendants who do not show up for their sanctions, and they frequently are returned to the court by police.

For the most part, individuals who have visited the court are impressed by the clean new building, and the courteous way in which they are treated. Many of these defendants and visitors have had experiences with courts downtown and are aware that the RHCJC is a more pleasant and less antagonistic environment in comparison. They are greeted by court officers who are polite and friendly, some of whom even participate in the little league in Red Hook, and others who help the neighborhood children with their homework when they are on evening duty. From our interviews, even the defendants who remained skeptical of the programs and are less than enthusiastic about their mandates to therapeutic groups or community service usually preferred to have been processed through the Red Hook Court over the sprawling criminal court in downtown Brooklyn.¹¹⁵ Many are brought in more than once. The intimate scale and organization of the Court means that many are familiar with the staff. In fact, a major goal of the RHCJC is that this familiarity will ultimately lead the defendants back to the Court voluntarily when they are looking for help.¹¹⁶ Although this is a rare occurrence, voluntary usage of the Justice Center's therapeutic services such as drug treatment does happen occasionally.

C. Practical and Conceptual Challenges

At this operational level, the RHCJC could be seen to be relatively successful. The courtroom works efficiently; the staff is, for the most part, extremely pleasant (especially in relation to downtown courts). The RHCJC has created partnerships with different social service agencies that are in the buildings; it launched programs to address local disorder problems such as cleaning up a park. RHCJC provides case processing that mandates defendants

114. A quantitative assessment on the case processing and sanctions cannot be provided in this Article due to space limitations, but such assessments will be provided in future publications.

115. See *supra* note 87 and accompanying text.

116. See LEE, *supra* note 3, at 18.

into different social services; and since 1995, it has had an AmeriCorps program.¹¹⁷ The judge and other CCI staff attend community meetings, participate in local social events and recreational activities, and listen to community complaints about crime, housing, and disorder problems. While this model sounds ideal in terms of fulfilling the new role envisioned for a community court, as well as a pathway to legitimize its role in the community, some major fault lines have or are beginning to emerge that could impede this goal are outlined below.

1. *Social Needs Versus Legal Needs*

A community court is driven by an agenda that responds to local needs. At the same time, residents' social norms have to coincide with the needs of the law. Sometimes these are not easily reconciled: the Court remains a court and is limited by the fact that it operates within a legal field. For example, even if residents asked for marijuana to be legalized, the Court could not change its legal mandates. The Red Hook Court tries to balance its pursuit of public safety with its concerns for fair treatment and therapeutic sentences.¹¹⁸ Both dimensions of the Court contribute to its perceived legitimacy.¹¹⁹ When the needs of the community and the legal institution coincide, this will work; however, if they clash, this threatens to destabilize the model.

In Red Hook, community leaders were consulted in the RHCJC planning stages.¹²⁰ The Justice Center was the culmination of six years of community needs assessments and planning that included focus groups, surveys, and town hall meetings.¹²¹ Leaders made it clear that their main concern was to provide the neighborhood with prevention programs and new social services, in addition to a court that would provide individualized justice laden with therapeutic content. Craig Hammerman, the district manager of Community Board 6 in 2001, when the interviews were conducted, was involved in this process. Community Board 6 is the district that includes Red Hook along with other very different neighborhoods.

117. See, e.g., *id.*; see also Donovan, *supra* note 9, § 11, at 7.

118. See LEE, *supra* note 3, at 18.

119. See TYLER & HUO, *supra* note 13, at 101-08. See generally JOHN RAWLS, *A THEORY OF JUSTICE* (2d ed. 1999).

120. See LEE, *supra* note 3, at 18; see also BERMAN, *supra* note 97, at 3-4.

121. JOAN JACOBY & E. RATLEDGE, *FOCUS GROUP REPORT: COMMUNITY EXPECTATIONS OF THE RED HOOK COMMUNITY JUSTICE CENTER* 8 (1994) (on file with authors).

CB6 Leader: We tried to bring everyone together, just to start talking about the kinds of things the neighborhood felt they needed. And certain themes started to emerge. Employment training and assistance was generally at the top of everyone's list. And, lock-step with that was educational assistance—tutoring, mentoring programs, counseling programs, drug prevention, family planning. All of these kinds of themes just emerged from so many different sources that it was clear to all that these were really what the essential needs of the community were, that they felt were not being met. And so, the whole non-offending population of Red Hook services started to take shape and form over the course of these discussions Initially, it was a difficult project because it was presented as a concept, and a lot of concepts come to us, but very few of them actually reach fruition. They did not have a fully thought-out plan, they certainly did not have a site for this. We wanted to try to lend some practical assistance where we could, in bringing people together, to talk about the problems—one of them being what this non-offending population would be, another one being, what kinds of services this facility would offer.¹²²

Planners included social services in the RHCJC that were available for anyone on a walk-in basis. During the planning process, community leaders stressed education, job training, and youth development as major categories of services they required. Community leaders also were sold by planners on the idea of community service crews as part of a restorative justice model that would work throughout the neighborhood.¹²³

The RHCJC opened with a selection of these programs and services on site. The Court caseloads were dominated, however, by drug arrests made from trespass sweeps taking place in Red Hook public housing and elsewhere (for example, Operation Condor).¹²⁴

122. See *supra* note 87 and accompanying text.

123. See BRAITHWAITE, *supra* note 22, at 67 (discussing a study that showed that completing community service resulted in a greater commitment to the community and feelings of citizenship).

124. Operation Condor was an initiative of the New York City Police Department that used overtime pay to motivate police officers to make “buy-and-bust” arrests for drug offenses. The program produced thousands of arrests across New York City, but its tactics raised complaints from minority citizens about its racial disproportionality, and the excessive use of a full criminal justice process (including the use of pretrial detention rather than summons) for low-level drug offenders whose crimes were mostly non-violent and who posed a minimal public safety threat. The death of Patrick Dorismond, an unarmed citizen who was approached by police officers who tried to sell him marijuana during an Operation Condor arrest, heightened racial tensions between minority citizens and the police. See Jeffrey Rosen, *Excessive Force: Why Patrick Dorismond Didn't Have to Die*, NEW REPUBLIC, Apr. 10, 2000, at 26; see also

Large numbers of individuals were brought in on drug charges ranging from misdemeanor marijuana possession, to possession of controlled substances (powder cocaine, crack, or heroin). During the planning stages of RHCJC, residents identified drugs and serious violence as chronic problems they hoped the Court would address.¹²⁵ But the Court had not anticipated such high numbers of drug arrests over its first eighteen months. Nor did the Court plan for its criminal courtroom to be so dominated by drug charges. As a solution and by necessity, the Court adopted a drug treatment court model. Treatment schedules were devised and weekly updates to monitor defendants' (now clients) progress were institutionalized. The Court professionalized its drug treatment program and its contacts with treatment providers throughout the city as it referred defendants into short- and long-term treatment.

In the meantime, one of the two job-training courses run by outside agencies left the Justice Center due to both funding problems and low participation rates. A second provider, a job development program of the Fifth Avenue Committee, remained active. Also, the nurse supplied by community health network left after a long wait for the Court to obtain the certification of the health suite as a clinic licensed for testing and other medical services. Only the GED program, AmeriCorps, child care, victim advocacy, the Housing Resource Center, and Youth Court programs remained. While community service crews occasionally went to fix things around the neighborhood, they were focused mainly inside the courthouse, cleaning the facilities. The courtroom was more concerned with placing defendants into therapeutic groups than on concentrating on the way community service crews and other programs could be used as a form of restorative justice. It was not until 2002 that the Justice Center restructured these programs to launch clean-up projects in locations within the Red Hook neighborhood. Many of these were efforts designed under Operation Toolkit.¹²⁶

This move to therapeutic jurisprudence focused on drug cases took place as lawyers, judges, and most specifically, the district attorney's office advocated drug treatment for defendants, even for

William Rashbaum, *Police Suspend Extra Patrols for 10 Days*, N.Y. TIMES, Oct. 10, 2000, at B1.

125. BERMAN, *supra* note 97, at 2-3.

126. See *supra* notes 87 & 112 and accompanying text; see also BERMAN, *supra* note 112, at 5-6.

those who did not come in on drug arrests.¹²⁷ The high prevalence of drug cases on the criminal court's docket seemed to attenuate the creativity and innovation in sanctions that were central to the Court's original vision.¹²⁸ Instead, the Court shifted toward a social service agency that efficiently allocated defendants to therapeutic programs writ large. Community residents' expectations that a wide range of services would be available on site became increasingly less of a reality as the Court drifted towards a structural and jurisprudential model already established in other treatment courts.¹²⁹ One of the important goals of the concentration of services within the Court—the ability to obtain services on-site—remained only partially realized. Although housing services flourished with the opening of the Housing Part, several other core services such as job counseling moved out or lost funding. Defendants still travel to get many of services they need, especially drug treatment. As a referral service, however, the treatment clinic functions well, catering to individual addicts and their needs.

This organization of the RHCJC is a logical conclusion to managing caseloads produced by police enforcement priorities, and it meets the requirement of law and the district attorney's policy preferences for court-centered treatment of drug cases. This, however, was not necessarily the idea that community leaders had in mind in the planning stages for the Court. During Community Advisory Board meetings, community leaders are presented information about the number of people given sanctions, the number of people sent to treatment, and the number of people who do community service, but the leaders are not aware that the Court provides a narrower range of services on site than they imagined or expected. The RHCJC evolution and responsiveness has been driven more by the explicit need of prosecution of drug arrests, in the context of the Red Hook community's interest in drug treatment as one of a large number of sanctions and interventions.

The inability of the RHCJC to position itself outside of the more traditional courts as it responds to the needs and pressures within

127. See, e.g., Morris B. Hoffman, *Therapeutic Jurisprudence, Neo-Rehabilitationism, and Judicial Collectivism: The Least Dangerous Branch Becomes Most Dangerous*, 29 FORDHAM URB. L.J. 2063, 2068 n.22 (2002).

128. Although we observed other types of sanctions, such as alcohol evaluations in drunk driving cases, or treatment interventions in domestic violence cases, the heavy load of drug cases on the criminal court's dockets dominated thinking and planning about sanctions, and the location of providers to deliver them. See *supra* note 87 and accompanying text.

129. See NOLAN, *supra* note 24, at 189-93.

the legal system—such as prosecutor’s need for a flow of cases into drug treatment—is reflected by the limited uptake by Red Hook residents of the localized services and other RHCJC outreach efforts. Participation varies across the several programs in RHCJC, from strong participation in AmeriCorps to low participation in Youth Court.¹³⁰ Implicit in the RHCJC’s vision were a large number of voluntary users of the Court’s services. Some residents have walked in asking for help such as mediation services or sports programs and they have benefited from those services.¹³¹ Most residents, while acknowledging the presence of the RHCJC in the annual AmeriCorps survey, still have not branded the RHCJC as anything more than a court, and their lives remain untouched by its presence.¹³²

2. *Procedural Justice*

The Court exists in a community where many of the individuals have had experiences with several courts—family, criminal, and housing. In several cases, residents described these experiences as more negative than positive, and individuals may have been left more skeptical of the courts and their exercise of power. More than a few regarded the courts as contributing to crime problems, not ameliorating them, due to inefficient case processing, unfair judgments, and lack of protection against the state’s power to punish.¹³³ So, an alternative vision to the RHCJC model exists in Red Hook, one that exists in tension with the demands from the community to address crime and drug problems. This alternative vision is a more traditional vision of criminal justice, within an adversarial model: more efficient case processing coupled with fair judgments.¹³⁴

For some, the trade-off of due process rights for treatment, implicit in the therapeutic court model, is seen as a threat to delegitimize the new Court.¹³⁵ This is a tension in many drug courts,

130. *See supra* note 87 and accompanying text.

131. *See supra* note 87 and accompanying text.

132. *See supra* note 87 and accompanying text.

133. *See supra* note 87 and accompanying text; *see also infra* note 149 and accompanying text.

134. *See* N.Y. Ass’n of Pretrial Serv. Agencies, *supra* note 56.

135. Morris B. Hoffman, *The Drug Court Scandal*, 78 N.C. L. REV. 1437, 1479 n.166 (2000); Mae C. Quinn, *Whose Side am I On, Anyway? Musings of a Public Defender About Drug Treatment Court Practice*, 26 N.Y.U. REV. L. & SOC. CHANGE 37, 42-43 (2000); *see* NOLAN, *supra* note 24, at 71-72. *But see* Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System’s Response to Drug Abuse and Crime in America*, 74 NOTRE

where defendants receive treatment in lieu of jail time. But some defendants may agree to treatment, which they define as a sanction, even while protesting their innocence.¹³⁶ Professor Malcolm Feeley, for example, links the expansion of “alternatives” to the traditional court process in the name of efficiency as an entrepreneurial expansion of social control, rather than a substitute for ineffective methods.¹³⁷ The benefit to the common good to which community courts aspire may be compromised by the loss of other traditional roles that the Court and its players are meant to fulfill.

This tension emerges in Red Hook when one compares drug cases with other cases. The Court has directed most of its energy towards providing effective treatment of drug addicts. These cases take up a large amount of the Court’s attention. Defendants treated for this may accrue positive experiences if they feel the Court has given them an opportunity. Nevertheless, the real numbers of individuals in long-term treatment and under case management are much smaller than the number of individuals brought in on quality-of-life crimes and other minor issues. Many defendants in these quality-of-life cases regard these charges as arbitrary and unfair.¹³⁸ The Court does little to “hear” these defendants. Thus, they are not allowing them the “expressive voice” found to play an important role in allowing individuals to have a positive court experience.¹³⁹ It is the expressive voice that helps them feel acknowledged in terms of procedural justice.¹⁴⁰ Indeed, while the drug-addicted are encouraged to have an “expressive voice” to the judge, and in many ways “express” their guilt in public in front of a

DAME L. REV. 439, 459-62 (1999) (describing how drug arrests have outpaced other criminal arrests since 1980). See generally Colloquy, *The Drugging of the Courts: How Sick is the Patient and What is the Treatment?*, 73 JUDICATURE 314 *passim* (1990). See also *infra* note 202.

136. Wendy N. Davis, *Special Problems for Specialty Courts: Clients Get Needed Treatment Rather Than Jail Time, but Prosecutors and Defense Lawyers Alike Worry about Compromising their Roles as Advocates*, 89 A.B.A. J., Feb. 2003, at 36 (2003); Quinn, *supra* note 135, at 59.

137. Malcolm M. Feeley, *Entrepreneurs of Punishment: The Legacy of Privatization*, 43 PUNISHMENT & SOC’Y 321, 334 (2002).

138. See *supra* note 87 and accompanying text.

139. See TYLER, *supra* note 34, at 116-17. Professor Tom Tyler found that even individuals who felt that their legal experience had not had the outcome they desired could feel that they were given a fair hearing. *Id.* For many, the idea of fairness included this idea of being listened to, or having the chance to express ones circumstances—this is what Tyler calls the expressive voice. *Id.*

140. *Id.*

judge who now cures them,¹⁴¹ other defendants are sent to community service which, most commonly, results in cleaning the courthouse. Indeed, many defendants when asked what they thought community court meant, thought this was a Court where you had to do community service.¹⁴²

3. *Crime Control*

The RHCJC has defined its role in large part as addressing crime and quality-of-life crimes in Red Hook.¹⁴³ This is only one of several roles that the community has asked the Justice Center to take on. Indeed, the community may see the Justice Center's role to be about fair procedural and distributive justice, or about service delivery, or about repair of disorder conditions, or mediation with the Housing Authority.¹⁴⁴ Though concerned about crime, Red Hook residents were not expecting the Court to solve crime.¹⁴⁵ Why, then, pursue crime reduction as an institutional goal, when so many of the forces that contribute to crime are beyond the control or influence of the Court and the service reach of the Justice Center? By creating a more responsive Court built on individualized justice and provision of social services, the Court hoped that Red Hook citizens would attribute to the RHCHC a high level of legitimacy. The Court hoped that this legitimacy would motivate citizens to actively participate in social regulation and informal social control, thereby reducing crime rates. Accordingly, the expectation of lower crime rates was an explicit goal of the Court's planners.

Crime reduction may not be the *sine qua non* of the RHCJC, but it is an inescapable expectation that attaches both to the arguments in favor of its creation, and to the external views of the Court by the community and court system that accommodate and host it. Crime reduction is the justifying narrative for the therapeutic jurisprudence of the Court—the elimination of returning cases through treatment intervention. By leveraging its legitimacy into greater motivation by neighborhood residents to engage in social control efforts, the Court further embedded the expectation of lower crime rates into its justifying narrative. But if the Court justified itself as simply a path to treatment, it could be accused of being “soft on

141. NOLAN, *supra* note 24, at 111-12.

142. *See supra* note 87 and accompanying text.

143. Yael Scachner, *Red Hook Center to be 'Model' Community Court*, N.Y. L.J., June 2, 2000, at 1.

144. *See supra* Part II.B.2; *see also* Berman, *supra* note 97, at 2-3.

145. *See supra* note 87 and accompanying text.

crime.” Furthermore, the theories of physical and social disorder, which animate the Court’s focus on quality-of-life crimes, are also part of a crime reduction narrative in popular understandings of law and order.¹⁴⁶

4. Policing

One of the major paradoxes of the community court model is that within this triad of community, court, and services, the police remain somewhat attached by a separate strand. The police, while an important presence in the community court, attending meetings and working both with the judge and district attorney, remain outside of the Court’s administrative control and political influence, and their practices remain unaffected by the Court. In a community like Red Hook, the police are *the* major player in terms of law enforcement. Residents in Red Hook report that most people have had direct experience with the police, good or bad, and the community still sees crime-solving to be the responsibility of the police.¹⁴⁷ Indeed, at public meetings, they still accuse the police of either a lack of enforcement or unfair enforcement that leads to arrests of people for what they understand to be circumstantial or unfair reasons.¹⁴⁸

At Red Hook Tenants Association meetings, for example, which the police captain and police community liaison regularly attend, residents usually call for better and more policing. Although residents are not always clear about exactly what they want the police to do, or what tactics the police should use, residents consistently point to the low levels of patrol or law enforcement that leave drug dealers visibly doing business, even as police arrest what residents see as “the wrong people.”¹⁴⁹ In interviews, residents frequently complained of the way they or people they knew have been “disrespected” by the police.

146. DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 193-205 (2000); John Feinblatt et al., *Institutionalizing Innovation: The New York Drug Court Story*, 28 *FORDHAM URB. L.J.* 277, 281-82 (2000).

147. See *supra* note 87 and accompanying text.

148. See *supra* note 87 and accompanying text.

149. For example, Ketcham quotes a Red Hook attorney about policing in the neighborhood: “Let me tell you, for the record,” she says, “Community policing in places like Red Hook consists of little more than rousting the residents on a day-in, day-out basis. How come they’re not busting people with glasses of Chablis in the park after the Philharmonic? Open containers! Why stick with the 40s in the projects?” See Ketcham, *supra* note 14.

Even those people who are trying to exercise informal mechanisms of social control—for example through tenants' patrol or through running youth groups—feel they can do nothing without the cooperation of the police. For example, at Tenant Patrol meetings and Red Hook Tenant Association meetings, tenant patrol leaders frequently complained about police absence when they were sitting on patrol.¹⁵⁰ The absence of police finally caused one tenant leader to resign when she was threatened by local youths who sold drugs; she felt that her attempt to work for the community was not partnered by the police.¹⁵¹

Tenant Patrol Leader: You see the problem is that we are so distrustful of the police around here . . . there is [sic] always eyes and ears you know, that just going to find out what the tenants are saying, so they could go back and tell the people who shouldn't be hearing all that. So we are in a situation where we don't trust the police and we don't trust our neighbors.

Interviewer: What would make you trust them?

Tenant Patrol Leader: If they would do some of the things that they are supposed to do. You call . . . you call. OK say the Quality-of-Life thing that they have, the Quality of Life that they have is that we are guaranteed to have a secure place where we live at, we are not supposed to be scared to go outside, or even to the mail box, because there are people in the hallway. When we go to the police and tell them, first thing they ask "do they live in the building?" If they lived in the building, we wouldn't be calling them. You see they tell us don't call 911 for certain things; when we call the Quality of Life number we still don't get any response. We are so tired of the police not caring about what is going on. Then the Justice Center was supposed to be designed specifically for this area to deal with what is going on. Every arrest they make in Red Hook was supposed to have these people doing community service in the community. They are not doing it. I haven't seen anybody convicted of a crime doing community service in the community. You know and it is like the Justice Center, we never really hear anything about that.¹⁵²

The RHCJC has actively sought the support of the police, but it has yet to address the issues of police-citizen interactions, or the responses of police-to-citizen reports of crime. At the same time,

150. *See supra* note 87 and accompanying text.

151. *See supra* note 87 and accompanying text.

152. *See supra* note 87 and accompanying text.

the police tend to blame the Court's "revolving door"¹⁵³ for the intractability of quality-of-life problems and other crimes in response to residents' complaints about the police during community meetings. It was not uncommon to hear police say that they can make an arrest, but they had little control once the person is in court.¹⁵⁴ The RHCJC, in its need for legitimacy within the community, sits in the crossfire between citizens and the police. The RHCJC needs the police to support the Justice Center's daily operations, and the police similarly need the Justice Center's help in identifying and punishing serious offenders.¹⁵⁵ The police will refer residents and complaints to the Court if it trusts the Court to manage these problems. Informal interviews with the police, and observations of court-police interactions show that while the RHCJC has been successful in gaining the support of the police, it has been less successful in responding to residents' concerns and acting as a mediator between the police and the community. Although smoothing police-citizen relationships was not an explicit goal of RHCJC, one informal role of the AmeriCorps volunteers has been to hear citizen complaints about police. This is quite different from creating a formal or direct channel for residents to directly convey their concerns about the police, or raising these issues directly in their interactions with police. Citizens' evaluations of the legitimacy of the law and legal institutions are greatly influenced by their subjective ratings of procedural fairness in their interactions with police, and many RHCJC residents rated the police poorly in both interaction quality and crime control.¹⁵⁶ Indeed, a common informal comment by RHCJC staff recorded after community meetings was to note that the police could not win; one moment the neighborhood residents were asking for more enforcement, and the next complaining that there were too many arrests.¹⁵⁷

This unofficial attitude of the court staff to the contradictions of the police is conveyed in formal ways to defendants and residents. For example, individuals who receive summons from the police often are mandated to attend "quality of life groups."¹⁵⁸ When

153. SVIRIDOFF ET AL., *supra* note 4, at 6.

154. *See supra* note 87 and accompanying text.

155. For example, the informal relationships between the court staff and police mean that the police can alert the prosecutors to known persistent offenders who are coming in front of the judge and ask for maximum sentences.

156. *See supra* note 87 and accompanying text.

157. *See supra* note 87 and accompanying text.

158. RHCJC created "quality-of-life groups" as an alternative to the traditional system of imposing fines for summons offenses that adheres in the centralized crimi-

participants express complaints about the validity of their treatment by police, court staff members most frequently respond, in the groups we observed, that they already had the moment to say this in front of the judge, but that they are now in these groups to discuss community problems and why police are giving these tickets.¹⁵⁹ Court staff focus the group content on how participants in the groups can ensure that they either avoid another summons or arrest. Participants' complaints are usually deflected even though many have not in fact seen the judge because when they arrive for their summons, they are advised that they can go straight to a "quality-of life group" and forego seeing the judge if they wish, and this will mean they can dispense with the ticket more quickly. Residents obviously appreciate the chance to dispense with their tickets quickly, especially when their court appearance often means losing pay, however, this format means they are denied any forum to express their discontent.

Group participants were also not given information about police precinct meetings where they could voice these complaints at any of the groups attended by the Authors.¹⁶⁰ Although this service was not part of the Justice Center's work, residents consistently identified policing as one of the community conditions that was problematic for them and that affected their quality of life.¹⁶¹ In one group, residents complained about summonses they had received for public urination in a park, and asked why there were no public toilets in their park.¹⁶² No one took this opportunity to advise them on how to petition their local politicians to obtain the types of improved services that could eliminate this low-level crime problem.¹⁶³ Instead, respondents were told that these quality of

nal courts. Each group session lasts about forty minutes. RHCJC staff explain the impacts of minor infractions—such as an open alcohol container or a dog off a leash—on the surrounding community. Participation is voluntary, and defendants can reject the group and ask for an appearance before a judge. Although they are unlikely to receive a criminal conviction for these types of offenses, defendants face a tradeoff of a quick and instant disposition with the possibility of a fine for a longer process that avoids monetary costs. For poor people in neighborhoods like Red Hook, the choice is obvious. In this dynamic, defendants rarely have a chance to object to the validity of the summons or to their treatment by the police.

159. *See supra* note 87 and accompanying text.

160. *See supra* note 87 and accompanying text.

161. *See supra* note 87 and accompanying text.

162. *See supra* note 87 and accompanying text.

163. Such problem-solving tactics are a routine part of the "new policing" that blends targeted enforcement with strategies to address social and other public services. *See, e.g.,* David Thacher, *Conflicting Values in Community Policing*, 35 *LAW & SOC'Y REV.* 765, 765-77 (2001).

life disturbances are bad for the neighborhood's reputation. In this case, the opportunity for residents to express questions of fair treatment by police and distributive justice in a legal or political forum is exchanged for efficient case processing that gets defendants through the Court and disposes of their summons ticket as quickly as possible. For residents, it seems that efficient case processing is exchanged for the opportunity to express questions of fair treatment by police and distributive justice in a legal or political forum.¹⁶⁴

The Court has included the police in discussions about community issues. As part of Operation Toolkit, the Court invited police captains and tenant association leaders to discuss problems in the local park, and find strategies for its improvement. While these problem-solving forums are productive, they have neither enabled "public" discussions that could make the average community member feel that the Court was bridging a gap between the police and the community, nor empowered the community in their relationship with the police. Furthermore, the tenants' association leaders and other community group leaders have had access to the precinct captains for some time before the arrival of the RHCJC as the police captain has tried to attend a variety of community group meetings around the neighborhood as part of his own community strategy. The RHCJC has yet to provide access to the police for those who have consistently lacked this access.

So far, the Court has been unable to create a political space where discussions can take place between the police and community residents. While some community members suggested at Community Advisory Board meetings that the police could hold workshops for young people in the Court, this was never taken up. Indeed, when one community member at the Community Advisory Board meeting began to complain about police activity, and point out that many young people were still afraid of the police, the judge got up afterwards to thank the police and remind people about the work they had done for Red Hook.¹⁶⁵

The Court is limited in its ability to influence police strategy and tactics; these decisions are made at the local precinct level and by police officials at the highest levels of the police department. Yet, the Court's work is shaped and strongly influenced by local police tactics. The Court also has no jurisdiction or influence on citizen-police interactions, but in the long term, these interactions contrib-

164. See Davis, *supra* note 136, at 36; Thompson, *supra* note 5, at 80.

165. See *supra* note 87 and accompanying text.

ute to individuals' overall experience of the law and willingness to participate in social control or cooperate with police.¹⁶⁶ If residents remain closed off from venues to express evaluations of policing, the positive experiences they have had with the Justice Center could be neutralized. It is not enough for the Court to claim they have no control over the police. There are numerous examples of new ways that the community and the police can work together outside of just encouraging residents to turn in drug dealers or spotting signs of disorder.¹⁶⁷ The RHCJC has created many points of contact with the police, such as police involvement in Youth Court training. But these structured activities are qualitatively different from establishing a democratic and transparent forum where citizens can dialogue with police on a range of topics, such as the Beat meetings in Chicago.¹⁶⁸ If the Court could create such a new forum for productive and cooperative interactions between police and community, it would then be making real inroads into changing common sense perceptions among all the stakeholders about law, power, and legitimacy.

5. "Just Another Government Program"

The RHCJC faces a history of poor government in the neighborhood. The relationship between the community and the government is one characterized mostly by disillusionment and disempowerment.¹⁶⁹ The RHCJC works within this legacy and has to battle to overcome it. This is no small task when this concept has been reinforced in a myriad of legal and quasi-legal interactions, from housing, welfare, and education to other everyday legal demands.¹⁷⁰

166. Mark H. Moore, *The Bottom Line of Policing: What Citizens Should Value (and Measure!) in Police Performance* (Police Executive Research Forum, Washington, D.C.) (2002). Of course, it is possible that a positive experience in the court might influence a citizen's perception and evaluation of the police, but contacts with the police tend to be far more common for most citizens than are contacts with the courts. See PATRICK LANGAN ET AL., U.S. DEP'T OF JUSTICE, CONTACTS BETWEEN POLICE AND THE PUBLIC: FINDINGS FROM THE 1999 NATIONAL SURVEY 1 (2001), available at <http://www.policeforum.org/BJS%20Contacts.pdf> (last visited Mar. 15, 2003).

167. See, e.g., WESLEY SKOGAN & SUSAN HARTNETT, COMMUNITY POLICING, CHICAGO STYLE 5-9 (1997); Jeffrey Fagan, *Policing Guns and Youth Violence*, FUTURE OF CHILDREN, Summer/Fall 2002, at 133, available at http://www.futureofchildren.org/usr_doc/tfoc_12-2j.pdf (last visited Mar. 15, 2003).

168. SKOGAN & HARTNETT, *supra* note 167, at 113-37.

169. See, e.g., Kasinitz & Rosenberg, *supra* note 9, at 183-84; *infra* note 149 and accompanying text.

170. EWICK & SILBEY, *supra* note 64, at 144-64.

The mere presence of the Court is not enough to generate its own legitimacy or reassure the community about “government.” In Red Hook, the community is accustomed to failure of government projects, and as displayed in our interviews, they seem to anticipate these failures.¹⁷¹ The few recent government initiatives (such as proposals to establish a waste transfer station and another to start a methadone clinic in the neighborhood) were viewed by neighborhood residents as threatening to its health and economy.¹⁷² The RHCJC is well aware of this challenge. In interviews, the senior court officials stressed that the RHCJC’s existence and its responsiveness will be a way to restore people’s faith in the courts, other government agencies, and ultimately, government itself.

Court Administrator: Our position is “Here is a problem, let’s talk agency to agency; how can we fix it?” . . . So in some ways it is providing this kind of agency for governmental support for the community to address issues, which if they were just operating as a community organization, they may have difficulty.

Interviewer: So it is a little leveraging. . .

Court Administrator: It’s leveraging the authority of the court. . . I would say that part of what we are trying to do [is] increasing public confidence in the justice system. . . You need to understand that that is what it is being driven by . . . You could make an argument that it is important to remember that this is really about trying to figure out ways to make the courts improve, and if it so happens that by putting it out in the community you are doing a slightly better job that is good. But it is not only about increasing public confidence in the justice system; it is actually increasing confidence in governmental systems in the way these systems operate. . . Six months down the road people won’t remember that there was a time when we didn’t do housing, but everyone will always remember if we do a really crappy job of dealing with our treatment cases. . . [That] creates a reputation for lack of integrity in what you are doing. I am not sure what we will find when we look at how many people are succeeding in the long term treatment, but I feel very comfortable that it is a very rigorous program that we have in place of tracking defendants on a weekly basis, reporting to the whole system, bringing people into the court periodically. I guess if

171. See *supra* note 87 and accompanying text.

172. *Id.* The community’s instinctual suspicion of government is activated not only for potentially harmful initiatives, such as the waste transfer station, but also for more benign proposals such as the plan to create a business improvement district for Red Hook. See BERMAN, *supra* note 97, at 3-4.

you are going to bite something off you have to show that you are doing it well, or show that you are making an improvement over the previous system.¹⁷³

Court directors hope this new faith emerges through the Court's case processing, which is highly individualized and responsive: people get the services they need, compliance is rigidly monitored, and the Court does not encourage a "revolving door" attitude to justice. The Court is also efficient and services are delivered quickly. Furthermore, the Court is accountable because it can respond to complaints from both individuals and community groups. Finally, as the Court canvasses the neighborhood for problems it can solve, and as it addresses these problems in new ways, it will also show the community that the government works for them.

While this may sound reasonable, the Justice Center may be optimistic in its assumption of just how far they have to go, even to prove to neighborhood residents that the Court has arrived for the good of the community alone. The annual AmeriCorps survey shows that over seventy percent of Red Hook residents know about RHCJC, and those who are aware of it generally approve of what it does.¹⁷⁴ They rarely see the Court as "harmful" to the community. But the most common assumption that defendants and residents articulated in the interviews when questioned about why the Court is in Red Hook, is that the downtown courts are overloaded, not that the Court's primary motivating factor is Red Hook's public good.¹⁷⁵ Furthermore, even those community leaders who have given the RHCJC its full support, such as this Pastor at a local church, are not without their own interpretations:

Pastor: I think it was for other people's benefit as well as for the people in Red Hook. But kind of more beneficial for, you know people got new jobs and big promotions, and you know, they did a whole building. Some people [in Red Hook] got jobs but far from what others should have got you know. AmeriCorps, this that . . . we had new state lawyers, you know the much less stressful [work] but getting paid the same money. . . .

You use what you got, to get what you need. Some people will not benefit [from the Court]. It is like any other thing. So if this is how it has to be done, in order to get the money to support programs. . . . They have the wonderful mentoring program. . . .

173. See *supra* note 87 and accompanying text.

174. See *supra* note 87 and accompanying text; see also KELLI MOORE, CTR. FOR COURT INNOVATION, RED HOOK PUBLIC SAFETY CORPS: OPERATION DATA 2001 (2003).

175. See *supra* note 87 and accompanying text.

The good, the bad the ugly and the beautiful, it is all there. We pick out what we can use and what we can't use, and we don't use it. And we have learned how to do that very skillfully, us black people, we can pretend like it is not there. We have been disappointed a lot; we don't trust a lot of people.¹⁷⁶

Others hold a more cynical view, seeing a deception, both in terms of the ability of the court to live up to its word, and its ability to share resources. For example, one young man, Edward, who also runs a youth program said:

Edward: People always write about what they are going to do, they get these proposals, these grants, and for me it is just money-making. Yet the residents and the young people, they are not getting anything out of it. And I think that some people tend to shy away from the focus of the problem out here, they can say we are going to fight drugs, we are going to do this, we are going that, but it is just words, cause you can't fight drugs, cause drugs is controlled by the government.

Researcher: Very defeatist . . . cause you are saying you can't do anything, how could you fight it?

Edward: The way for people to fight it is to just try to continue to encourage people, you know trying to provide more preventive programs out here, cause the drugs is not going anywhere, it has been around for many years and it's not going anywhere. They know it is a serious drug problem out here and this is where crime is at . . . where drugs is at you need some sort of a court system to deal with the crime, to keep it on the hush, but you are not going to eliminate drugs, cause if you eliminate drugs there is no need for a justice center.¹⁷⁷

Edward's comments suggest that, for some residents, the Court is being judged on its ability to keep its promise that it is there for the public good and to improve safety. This was how the Court's founders gained consensus among different community leaders.

One way that the RHCJC hopes to go beyond the impacts of the courtroom alone is through Operation Toolkit initiative, discussed above.¹⁷⁸ This is the Justice Center's major vehicle to help reduce disorder and engage community residents in the co-production of security. The RHCJC advocates Operation Toolkit as another way to restore public confidence in government. Residents bring ideas for Toolkit projects to RHCJC, and some of these ideas are then translated into projects designed to rid the community of health,

176. *See supra* note 87 and accompanying text.

177. *See supra* note 87 and accompanying text.

178. *See supra* note 112 and accompanying text.

safety, and public safety problems. RHCJC then mobilizes public agencies and residents to work collectively to resolve these problems.

The idea is promising and innovative, but the early stages of Toolkit's implementation have been limited.¹⁷⁹ By the end of the research period, the Court had two projects within Red Hook (and others in surrounding neighborhoods discussed later). One was to adopt and clean up the park closest to the courthouse, and to help establish a "Friends of Coffey Park" and other activities that would revitalize it. The Justice Center sent community service crews to the park over the summer to pick up trash. They also organized clean up drives twice a year with AmeriCorps members, and have earned commitments from the Parks Department for improved lighting and groundskeeping. This was one example of a project that could use the different resources of the Justice Center for a positive and productive solution. Friends of Coffey Park was honored as "Park Group of the Year" in 2002 by the New York City Partnership for the Parks.¹⁸⁰ The other project was to clear cars out of an alley directly opposite the RHCJC building, a problem that residents complained about directly to the Court. The project was funded by raising money from RHCJC staff and local residents to hire a tow truck to remove the cars. Residents were pleased with the result (reported in a survey conducted by the court after this project).¹⁸¹ This project, however, did not achieve the goals of community building or innovative problem solving. Community-building would involve the creation of a lasting set of sustainable programs, rearranged institutional relationships, or the contribution of tangible assets or structures. This one-time project to remove abandoned cars had the salutary effect of prettifying the neighborhood and providing a context for NYCHA residents and private homeowners to interact productively. But we were unable

179. The research period ended a few months after Operation Toolkit was launched. The discussion of its implementation should be read as preliminary.

180. BERMAN, *supra* note 112, at 4.

181. The Court's two Outreach Officers distributed a brief, one-page survey to residents on the block where the cars were removed, to gauge resident satisfaction with this action. The survey reported a reduction from eighty-five percent to seventy-six percent in the number of residents who thought that abandoned cars were a problem in the neighborhood, more than eighty percent credited the Justice Center with taking effective measures to fix this problem. The survey was conducted for the Court's internal use, and the survey results are stored at the administrative offices of the RHCHC.

to discern changes in social interactions or lasting contributions from this activity.¹⁸²

Finally, and most importantly, the selection by the Justice Center of which problems to solve has repercussions on the building of the residents' faith in government. If the Justice Center can focus only on smaller "problems," such as clearing out abandoned cars, without taking on larger problems at the same time—such as drug selling and serious violence—it is less likely to restore faith in government, even though it may be commendable at an organizational scale. The Justice Center assumes that these smaller, manageable projects will strengthen its relationship with residents and build legitimacy by addressing small disorder problems that may grow into bigger crime problems. In this way, the Justice Center follows the "Broken Windows" theory that these improvements contribute to public safety.¹⁸³

Meanwhile, residents continue to demand more police presence and better enforcement that targets drug dealers. The RHCJC has limited scope and resources and must make a strategic decision as to where to focus its resources in order to be considered a representative of government that works both in partnership with the community and for its public good.¹⁸⁴ While many individuals in the RHCJC are motivated by their concern for Red Hook, it is not clear if the Justice Center will restore faith in government or whether the Court is just more of the same—a well-meaning government program that fails to deliver what the neighborhood really needs. Currently, Red Hook residents continue to attribute many of their problems to unsatisfactory responses by government agencies, agencies that residents feel could have made an immediate difference, most poignantly the police and the housing authority.

Residents in Red Hook have welcomed the RHCJC as a new government program, but its presence alone does not guarantee its

182. See *supra* note 87 and accompanying text.

183. See GEORGE KELLING & CATHERINE COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 19-20 (1996); see also James Q. Wilson & George L. Kelling, *The Police and Neighborhood Safety: Broken Windows*, *ATLANTIC MONTHLY*, Mar. 1982, at 29-38 (arguing that unchecked crime leads to multiple crimes by signaling that no one cares about the neighborhood; therefore, by treating small crimes seriously, serious crimes will be less likely to occur). But see BERNARD HARCOURT, *ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* 88-89 (2001).

184. See Symposium, *Problem Solving Courts: From Adversarial Litigation to Innovative Jurisprudence: Eleventh Annual Symposium on Contemporary Urban Challenges—The Changing Face of Justice: What Works and What Does Not*, 29 *FORDHAM URB. L.J.* 1929, 1953-57 (2002).

legitimacy. People used to failure and broken promises will judge the RHCJC on results. If the Court fails to deliver on its promises to reduce crime, it will be lumped into this local history of failures. Failure will not necessarily generate a protest against the Court, but is more likely to produce anomie and inaction on the part of residents in their decisions to participate in the Court and in the dynamics of informal social control. In this context, case processing and therapeutic programs will continue. But the danger is that the RHCJC could remain a symbol of how government fails to act on residents' articulated needs as opposed to their perceived needs, ultimately turning the Court into what one (cynical) resident renamed it—"a ghetto court"—and defeating its larger goals to the creation of a dynamic that will engage residents in social regulation and control. To sustain community involvement and accrue legitimacy, the Justice Center will have to address the reinforcing cynicism of the neighborhood's unmet expectations.

6. *Conflicting Laws and Policies*

The concept of a multi-jurisdictional court was advocated in the first place as a way that one judge, presiding over three courts, could come to see the same people and provide a more holistic solution.¹⁸⁵ The standard example was of a parent in court with a drug problem, in family court because of a problem with her child, and in housing court due to an inability to pay the rent. These cases have been very rare in the Court's first two years. The confluence of cases within single families, however, raises the risk of conflicting claims on the family's resources and legal status. For example, the Court will have to face the fact that individuals who accept pleas on drug cases may become eligible for eviction from public housing projects, which will bring them into housing court. These problems are cropping up in courts across the country, and the benefit of the doubt in drug-related eviction orders rests with the public housing authorities, as decided by the United States Supreme Court decision in *HUD v Rucker*.¹⁸⁶ While these issues

185. See Scacher, *supra* note 143, at 1.

186. *Dep't of Hous. & Urban Dev. v Rucker*, 535 U.S. 125, 136 (2002) (holding that the federal Anti-Drug Abuse Act, 42 U.S.C. § 1437d(l)(6) (1994), requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engaged in drug-related activity, regardless of whether tenant knew, or should have known, of the drug-related activity). In New York, public housing officials have similar discretion to evict tenants following conviction of co-residents on drug charges. See *Escalera v. N.Y. Hous. Auth.*, 924 F. Supp. 1323, 1343-45 (S.D.N.Y. 1996).

have yet to unfold in the Court, they could force the judge to modify his rulings, or could promote community dissatisfaction focused on the judge and the Court. This is just one example of many that shows how competing interests reflected in law and various layers of the criminal justice system can work against each other in the development of legitimacy. These externalities can impede—if not defeat—efforts of the Court to bring citizens into a closer relationship with the law.

7. *Social Organization and Political Power*

In interviews with senior managers, the RHCJC highlights its community partners and its contribution to the creation of a new generation of leaders within Red Hook. The RHCJC has employed eight former members of AmeriCorps all of whom work in the Justice Center: the AmeriCorps Project Director, the two AmeriCorps team leaders, the mediation director, the Operation Toolkit coordinator, the housing resource center coordinator, and the two community service supervisors. At this level, the Court may be helping individuals and building individual leadership, although the degree of power these individuals have in the running of the Court is limited.

The RHCJC confronted a more complicated situation as it tried to strengthen and create community groups (as opposed to developing individual leadership skills in a few select residents). As the RHCJC became part of the social organization of Red Hook and worked with community leaders, it risked reproducing the same political and social hierarchy that currently exists within and around the neighborhood. These local leaders and groups do not always speak for the majority of Red Hook's residents. For example, we often observed disagreements over re-zoning at local community meetings, where small numbers of well-organized private landlords were pitted against large numbers of other local residents. Although Red Hook is a well-defined geographic neighborhood, this area shares resource with other neighborhoods in Brooklyn. The police precincts, community board, and political districts that include Red Hook in their jurisdictions also encompass wealthier neighborhoods with vocal leaders and demanding residents and businesses (Such as Cobble Hill and Park Slope). This debilitates Red Hook in its most basic struggles for more resources, better services, and improved infrastructure. Red Hook often is forced to compete with wealthier, better-organized communities that possess the social, cultural, and political capital to get

what they need. The RHCJC must beware against reproducing these same fault lines by cooperating mainly with those groups that recognize established interests in the Red Hook neighborhood, thereby marginalizing the broader neighborhood's needs. The RHCJC will have to move well beyond its town hall meetings, infrequent Community Advisory Board meetings, and its annual AmeriCorps survey, to create a sustainable and vibrant forum for democratic participation of local residents in charting the Court's future. If such fault lines persist, these divisions are likely to stand in the way of a full realization of the RHCJC's goals.

One example of the tensions faced by the Justice Center is evident in the way it has had to resolve the issues of the demands between those groups in Red Hook who represent the "gentrifying" class and the majority of the Red Hook residents in the public housing development.¹⁸⁷ The gentrifiers have often come to Community Advisory Board meetings and publicly pressured the Court to help them in their attempts to have traffic laws enforced and to limit the number of trucks coming into the neighborhood.¹⁸⁸ While the Court may be less specifically interested in these issues, these neighborhood groups are well-organized, active at various other community meetings, and vocal in the local press. Accordingly, they cannot be ignored by the Justice Center, and, indeed, have the political skills and access to hijack the Justice Center's limited resources. While the Justice Center tries to ensure that this does not happen, it also faces the fact that a wide range of groups can claim the "community" label to ask for the Justice Center's help.

The RHCJC was designed at the outset to serve Red Hook.¹⁸⁹ But its costs and resources could only be justified if its caseload were larger than what was generated from Red Hook proper. CCI thus expanded the Court's jurisdiction to include cases from throughout the three police precincts that patrol Red Hook: the Seventy-Second, Seventy-Sixth, and Seventy-Eighth precincts. Red Hook cases alone were not sufficient in number to fill the

187. Tara Bahrapour, *Warehouse is an Emblem of Newest Waterfront Battles*, N.Y. TIMES, Feb. 9, 2003, at CY8.

188. See *supra* note 87 and accompanying text.

189. Planning documents for the RHCJC emphasized its embedment in the specific problems of Red Hook. For example, one of its grant applications states, "The Red Hook Community Justice Center, a multi-jurisdictional community-based courthouse, will apply lessons from Midtown to a self-contained, inner-city neighborhood, burdened with problems common in dense, low-income urban neighborhoods throughout the country." Ctr. for Court Innovation, Grant Application to the State Justice Institute (Nov. 1998) (on file with authors). "Justice Center services will be available to anyone who lives in Red Hook—victims, defendants and residents alike." *Id.*

courtroom and justify the transfer of a Legal Aid office, a district attorney's office, court officers, and other personnel. Although the RHCJC is well aware that it serves three very different communities, it still focuses primarily on Red Hook. CCI's first Executive Director explained the rationale:

[D]ecentralization is not [a] perfect thing. . . . you can't spend the money on decentralization and not take a larger area than you would probably like to take. That is just life. You probably could do it, and there are some experiments. I want to do but they are much cheaper experiments many ways but if you are going to do something like what we did in Red Hook. . . . You are going to find that the impacts are different depending on where it is, and that the focused impact is going to be in Red Hook, particularly on the community end. You are going have a more diffuse impact beyond it, and you know that's OK, that is just how it is going to be. That is not to say that you are going to ignore your central core, but I think that you are going to have to be realistic about what you can deliver in Red Hook and what you can deliver in Smith Street in [Carroll Gardens.]¹⁹⁰

Although designed to impact Red Hook, the RHCJC was soon accountable to two additional neighborhoods, including the wealthier Carroll Gardens and Cobble Hill neighborhoods, and Sunset Park, a working class neighborhood with a strong concentration of Latino families in single-family dwellings.¹⁹¹ This was an artifact of the expansion of the RHCJC catchment area to include all three police precincts that have patrol sectors in Red Hook.¹⁹² Senior staff members try to go to community meetings throughout the three areas. The inclusion of these other neighborhoods, however, each with stronger political and social capital, may disadvantage Red Hook in its fight for social and economic resources. At the least, for those in the community who were told that this is the "Red Hook Community Justice Center," it has seemed either confusing, or representative of the way Red Hook is always left behind in reality. One of the leaders of the public housing tenant patrols noted:

190. See *supra* note 87 and accompanying text.

191. N.Y. City Dep't of City Planning, Demographic Tables, *supra* note 71.

192. The Executive Director explained that while the socially and geographically isolated Red Hook neighborhood was the focus of the planning efforts leading to the creation of RHCJC, the low volume of cases from Red Hook alone necessitated an expansion of the catchment area to include all the neighborhoods patrolled by the three police precincts that patrol Red Hook. See *supra* note 87 and accompanying text.

Tenant Patrol Leader: At the time it seemed like a good idea because it was focusing on crime. These people in the project know that if they commit a crime they [are] going to go right here in the back where they have jails and judges. It was only supposed to be the second one in the country, and it was only supposed to be for Red Hook residents. Now I found out that it is for Red Hook, Gowanus, it is for all over the place. And I haven't even heard of anybody being sent back there doing community service in the projects; they are supposed to be doing community service in the projects.¹⁹³

While Red Hook residents may begin to wonder why they are sharing their precious resources with residents in the other neighborhoods when they were finally promised something to help them, some of the interviews still show Red Hook residents asking why Red Hook has received this Court and what good it does them.¹⁹⁴ At the same time, the situation can be confusing for other residents in the precincts processed at the RHCJC. One young man from Gowanus Housing in Cobble Hill was arrested on a trespass charge in the housing development and mandated to a treatment readiness group. He was impressed with the fact he could get acupuncture and attend this group therapy, but lamented that he had to come to Red Hook for this, and asked what good that was for him living elsewhere.¹⁹⁵ As administrative lines draw the boundaries that define these programs and new institutions, these boundaries can conflict with local understandings of neighborhoods in need.

Red Hook suffers not only from the fact that it has a small number of active community leaders who maintain a rigid hold on local power and resources,¹⁹⁶ but also because the community has lacked the numbers and the political voice to command the resources it needs. The RHCJC inadvertently continues this tradition by broadening its focus to the surrounding neighborhoods. For example, when soliciting at the Community Advisory Board meeting for "problems" to solve through Operation Toolkit, both community leaders from Red Hook and other interested parties from the surrounding neighborhoods offered suggestions and voiced their concerns. One was a member of a local economic development corporation who discussed the noise problem being created by up-

193. See *supra* note 87 and accompanying text.

194. See *supra* note 87 and accompanying text.

195. See *supra* note 87 and accompanying text.

196. Kasinitz & Rosenberg, *supra* note 9, at 182-84

scale restaurants and bars in Smith Street in Cobble Hill.¹⁹⁷ This street is now one of the most fashionable Brooklyn streets, and has little to do with Red Hook. RHCJC staff offered their services to help mediate between the businesses, talk to residents, work with cab companies, the police, and mediation services.¹⁹⁸ While these are all solutions, this diverts resources and attention that might otherwise be focused on Red Hook. Another member of the local economic development group who was also the head of the Police-Community Precinct Council, asked for a community service project to (re)paint the iron work in a local park in Cobble Hill.¹⁹⁹ This park lies amongst million dollar homes. A crew was immediately dispatched in days and local newspapers came to photograph defendants "cleaning up the community." Even though the bulk of the community restitution projects have targeted the Red Hook neighborhood, none have generated this type of media attention.

These developments created contradictions for the RHCJC between the political and social organization of Red Hook, the inherent tensions between components of the criminal justice system, and the theoretical foundations of therapeutic jurisprudence, individualized justice, and problem solving that are intrinsic to community courts and community justice centers.²⁰⁰ These concepts connect community and defendant in their shared concerns and social norms. In the end, the Court's pursuit of legitimacy could suffer as defendants lose sight of these connections and as the Court stretches its philosophy to accommodate dynamics launched from the political economy of a "contested" community.²⁰¹ These developments threaten to compromise the moral communication component of the Court's unique form of sanction. As it tries to "heal" the problems of crime, drugs, and social disorder in Red Hook, other groups have made claims on the Justice Center, all in the name of "community." How the Court decides to use its limited resources, whose problems will be solved and how, are questions that will have repercussions on the Court's role in each of the communities that claim it as their own.

197. See *supra* note 87 and accompanying text.

198. See *supra* note 87 and accompanying text.

199. See *supra* note 87 and accompanying text.

200. Thompson, *supra* note 5, at 83-92.

201. CRAWFORD, *supra* note 2, at 148-64.

CONCLUSION

The RHCJC has created a new court and a new organizational form for the integration of justice and social services. It has expanded the power of the judge in ways that might be understood by many to work for the public good—despite the objections of some defendants and the defense bar.²⁰² Although beneficial and admirable in many ways, the example of the RHCJC suggests that efficiency and partnerships with service providers and community leaders does not necessarily generate a legitimate social institution. Community courts offer an alternative to the inefficient downtown court systems and a balance on the alienating power of the uncaring judges. Yet these courts face complex social histories and political dynamics that are far more complex than those faced by traditional centralized courts. Thus, these new courts take on a huge responsibility. Their broad agenda and inclusiveness raise expectations among local residents who may be difficult to reach. In struggling to reach these goals, community courts risk forgetting their obligations for due process, fairness, and results.

The RHCJC was designed to help rehabilitate a troubled neighborhood by enhancing its capacity for social control. The Community Justice Center approach to crimes of “incivility” and “disorder” was constructed as a promising strategy for not only rehabilitating low-level offenders, but also for revitalizing the neighborhood itself.²⁰³ The community justice model conceptualizes sanctioning as part of a healing process—one where the community, the victim, and finally the offender, are simultaneously healed. Sanctions are part of a larger process of restorative justice and are fashioned according to their ability to do this, as opposed to being cast within the rehabilitative or punitive ideal. Although originally designed to provide a creative and rich mix of social and rehabilitative services to citizens with a variety of legal entanglements and social problems living in a disadvantaged neighborhood the Red

202. Davis, *supra* note 136, at 36. The tension derives from the fact that the attorney-client privilege is not suspended in problem-solving courts. The risk is that the drug court “team” members may see a client or her lawyer as uncooperative if counsel fails to disclose client confidences that can be disclosed only under a waiver of the protections of 42 C.F.R. Such disclosures are routine in treatment, but not necessarily in court. See Caroline S. Cooper, *Letter to the Editor*, 89 A.B.A. J., Apr. 2003, at 12-14. The National Association of Drug Court Professionals also stated that there is no dilution of the ethical zealousness of a defense attorney in a problem-solving court, noting that a guilty plea has no particular therapeutic value. The National Legal Aid and Defender Association has endorsed this stance. See H. Scott Wallace, *Letter to the Editor*, 89 A.B.A. J., Apr. 2003, at 12-14.

203. SVIRIDOFF ET AL., *supra* note 4, at 12-14.

Hook Community Justice Center relies heavily on drug treatment to address residents' complex personal problems that do not easily fall into a simplified medical treatment paradigm. Despite its notable achievements—Operation Toolkit, the integration of AmeriCorps volunteers into the neighborhood, efforts to intervene in the recurring housing tensions between the NYCHA and Red Hook's poor, the pursuit of individualized justice and remedial interventions for defendants—the Justice Center remains focused on milling the neighborhood's "disorderly"—the loiterers, the publicly intoxicated—into drug treatment of uncertain effectiveness.²⁰⁴ Still, it produces more than "enough justice"—what Rawls terms "the good"—to affirm its founding principles.²⁰⁵

The early history of the Court reveals the challenges that are the product both of unforeseen and distant externalities in policy and political economy, and internal struggles to adapt to the supply of cases that arrive at its door. In responding to these challenges, the Justice Center created its own forms of sanctions and social control. These new forms of punishment are designed to take place in a context of "community empowerment," where arrest, prosecution, and punishment of offenders are designed to rid the communities of their social problems and to engage citizens in the dynamics of social control and regulation. Here the goal is to increase "community" participation in crime fighting, with a residual goal being to improve relations with the residents in the neighborhood in which formal control operates.²⁰⁶ Enlisting the community in the process of social control has been difficult for the Justice Center, however, as it often is in poor neighborhoods such as Red

204. See, e.g., D. Dwayne Simpson et al., *A National Evaluation of Treatment Outcomes for Cocaine Dependence*, 56 ARCHIVES GENERAL PSYCHIATRY 507, 507 (1999) (showing that treatment effectiveness is greater in inpatient treatment compared to outpatient counseling of the type offered to most of RHCJC's treatment referrals); see also STEVEN BELENKO, NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE 5-7 (2001) (showing that the research designs used in most drug court research are insufficient to claim that there are significant reductions in drug use or crime among drug court defendants compared to similarly situated defendants in other courts or to voluntary drug treatment participants), available at http://www.casacolumbia.org/usr_doc/researchondrug.pdf (last visited Mar. 15, 2003); U.S. GENERAL ACCOUNTING OFFICE, DRUG COURTS: BETTER DOJ DATA COLLECTION AND EVALUATION EFFORTS NEEDED TO MEASURE IMPACT OF DRUG COURT PROGRAMS, GAO-02-434, at 2-3 (2002) (stating that the available data is insufficient to claim that court-ordered drug treatment is effective), available at <http://www.gao.gov/new.items/d02434.pdf> (last visited Mar. 15, 2003).

205. RAWLS, *supra* note 119, at 393-97.

206. Kurki, *supra* note 22, at 1.

Hook.²⁰⁷ The Justice Center's efforts to enlist Red Hook residents in active forms of social control is challenged by Red Hook's social exclusion and concentrated poverty, and is likely to remain an elusive goal until these larger structural conditions change. The reasons speak to the complexities of creating a new legal institution in a neighborhood operating with strong deficits of social capital, social cohesion, and collective efficacy, the threads of the fabric of community that are essential to social control.²⁰⁸ The danger is that the Court will simply use the Red Hook community as symbolic partners,²⁰⁹ thus reinforcing the legacy of broken promises that characterizes Red Hook's relations with the government over decades. For now, the RHCJC remains caught in the laudable and ambitious nature of its goals

The Red Hook Community Justice Center illustrates the challenges that community justice centers face in their attempts to create unique institutions to re-legitimate legal institutions at the local level. The therapeutic ethos of the Court offers a source of legitimation, reinforcing traditional codes of moral communication and understanding.²¹⁰ The Justice Center enjoys a strong comparative advantage in procedural justice—justice as felt and experienced—over the large, fractured, and impersonal centralized courts, and reaps yet another quantum of legitimacy. The partnership with community and solving local problems of crime and disorder also is an engine for legitimacy. This legitimacy is central to the concept

207. See, e.g., Sampson et al., *supra* note 57, at 918-24 (showing how concentrated poverty can undermine the active participation of neighborhood residents in the social regulation of antisocial behavior); Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. REV. 361, 364, 406 (2001); see also Bursik & Grasmick, *supra* note 57, at 35-38 (discussing the roles of neighborhood residents in a systemic theory of social control that integrates formal legal and informal social control of delinquent behavior)

208. See Bursik & Grasmick, *supra* note 57, at 15-18, 150-57; Sampson et al., *supra* note 57, at 918-24.

209. See Kurki, *supra* note 22, at 3 (arguing that that challenge for government will be to encourage and support the new initiatives without stifling the spontaneity, creativity, and grassroots ties that are their strengths).

210. See Nolan, *supra* note 24, at 58. Nolan cites Judith Kaye, Chief Judge of the New York State Court of Appeals: "Courts today face a public that, by and large, is cynical and distrustful of all government, including the judicial system." Judith S. Kaye, *Lawyering for a New Age*, 67 FORDHAM L. REV. 1, 3 (1998). The engine for generating legitimacy, according to Nolan, is the appeal to dominant cultural values. See Nolan, *supra* note 24, at 15. Whether those values are individually responsible for one's crimes, or the beneficence of the court and its continued embrace of rehabilitation and redemption for minor offenders, depends on which culture and which values. The dominant culture on crime is anything but homogeneous. See Garland, *supra* note 27, at 139-93.

of leveraging felt justice into social control, and to engaging citizens in partnership with police to enforce social norms and laws. The gamble in this design is that citizens will see this arrangement as promoting a model of common good over simple fairness and efficiency in the courts. Residents are most likely to comply in this arrangement when they see the Court as a legitimate institution that works for the good of the community, not simply as a structure to repair problems of inefficiency in the court system. In the context of a community court, social control is a problem of both collective action and systems of mutual accountability.²¹¹ The Justice Center will be challenged to engender new forms of social control without this legitimacy.

211. For discussions of collective action and police-citizen interactions, see Dan Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CAL. L. REV. 1513, 1524-25, 1529 (2002); Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1168-69 (2000).

APPENDIX A

Table 1 Social and Legal Services at the Red Hook Community Justice Center			
Social Services			
<i>Partners/Services</i>	<i>Role/Function</i>	<i>Description</i>	<i>Onsite Presence</i>
Clinic (CCI)	Counselors and Social Worker	Drug treatment, social service and mental health referrals; batterers' programs; case management; counseling sessions; anger management classes	Clinic onsite
Phoenix House	Total Abstinence Drug Treatment	Treatment Readiness program; referrals to Phoenix House inpatient treatment; youth development and drug education group	Three counselors onsite
Board Of Education	Teacher	Morning classes and two evening classes; college scholarship help	Teacher and assistant is onsite mornings; guidance counselor one day per week
E.D.N.Y.	Addiction Counseling	Three hour marijuana class, twice a week	Employee comes in twice a week to give group
Victim Services	Victim Assistance	Advise victims; housing referrals; security assistance; assist with obtaining restitution	Staff member onsite
CCI Staff/Victim Services	Mediation	Mediation services to resolve disputes	Day and evening schedule
Youth Court (CCI)	Youth Development & Crime Prevention	"Peer" judging in the form of a court, for teens	Two evenings a week, full-time onsite staff
AmeriCorps (CCI)	Youth Volunteer Program	Youth volunteers are placed around South Brooklyn	Office onsite
Fifth Avenue Committee	Community Organization	Job placement and training referrals; resumé advice	Office in Basement
Good Shepherd Services	Youth Social Worker	Counseling to advise youth of Good Shepherd and other services	One full time staff onsite
Health Education	Health Education Counselor	Weekly groups for prostitutes and another for "johns" used as a court mandate	Group twice per week
Housing Resource and General Information (CCI)	CCI employee	Housing information; legal advice and referrals; advocate for needed repairs	Office onsite, one staff person
Day Care Center (CCI)	Staffed by AmeriCorps and Safe Horizon	Available to defendants using RHCJC services	Weekdays

Park Slope Safe Homes	Counselor	Domestic Violence Counseling and Advice	Twice a week (Started December 2001)
Community Health Network	Health Clinic	Left RHCJC December 2001	N/A
Center for Employment Opportunities	Job Readiness Course	Left RHCJC December 2001	3 mornings a week until departure
H.R.A.	Public Assistance Screening and Enrollment	Assistance with TANF, SSI, other income support, and human resources	2 days per week
Mentoring (CCI)	Youth Development	Mentoring program for local high school and middle school students	Office onsite
Criminal Justice Services			
<i>Agency</i>	<i>Role/Function</i>	<i>Description</i>	<i>Onsite Presence</i>
Legal Aide	Defense	In Court	Office onsite
District Attorney's Office	Prosecution	In Court	Office onsite
Probation	Officers	Sees defendants from court, and also monitors juvenile cases	3 staff persons onsite

